



(ILLINOIS, STATE OF)

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Wm. G. Morris

W. G. Morris





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REVISED STATUTES

OF THE

STATE OF ILLINOIS.

REVISED STATUTES
OF THE
STATE OF ILLINOIS,

ADOPTED BY

THE GENERAL ASSEMBLY OF SAID STATE, AT ITS REGULAR
SESSION. HELD IN THE YEARS, A. D., 1844-'5.

TOGETHER WITH

A N A P P E N D I X ,

CONTAINING

ACTS PASSED AT THE SAME AND PREVIOUS SESSIONS, NOT INCORPORATED
IN THE REVISED STATUTES, BUT WHICH
REMAIN IN FORCE.

REVISED AND PREPARED FOR PUBLICATION, WITH NOTES,
INDEX, &c. BY M. BRAYMAN.

PUBLISHED BY AUTHORITY OF THE GENERAL ASSEMBLY.

SPRINGFIELD:

WILLIAM WALTERS, PRINTER, FOR WALTERS & WEBER, PUBLIC PRINTERS.

1845.



P R E F A C E .

While all that relates to the general history of a State—its early settlement—its struggles for existence—its wars—its spreading population—its rising institutions—its advances in political power and social improvement, readily find a place in the chronicles of the times, the history of its JURISPRUDENCE is seldom written.

To trace that history through even the limited period of time which marks the distinct political existence of what is now the STATE OF ILLINOIS, would present an ample field, as well as a gratifying reward, to the philosophic legal inquirer.

It were to be expected, that the early enactments which proceeded, first from the Territorial, then from the State Government, would be crude, imperfect and inharmonious. They were not adopted together, as a distinct body of statute law, nor with any view to their connexion or consistency with each other; but hastily produced, at different times and places, in obedience to the ever-varying wants and circumstances of an unsettled, scattered and heterogeneous population. And if we recur to the days during which those hardy pioneers of civilization were contending with the difficulties of an untried soil and climate—when, to acquire the means of subsistence and defence, were objects of daily toil and nightly solicitude—when the rifle, and the plough, and the woodman's axe, proved better friends than the pen and the musty volume,—and the strong arm afforded more efficient protection than any law, we may readily conclude, that they found little leisure for the *business* of legislation, and that they made their laws, as they made their log cabins, their roads and bridges—as they *needed* them, for their shelter and convenience, from time to time.

Many of those laws, enacted under circumstances so disadvantageous, during the early history of our legislation, particularly those concerning rights to real estate and the administration of the penal code, stand almost untouched by the hand of innovation, as monuments of the sagacity, legal ability, and just views of those who framed them. Amidst the vicious superabundance of legislation in more recent times, some respect has been paid to the stern wisdom of the past; and it may be said, without offence, that greater progress has been made in manufacturing than in *perfecting*, laws for the government of the State.

It evidently does not appear that the improvements which so strongly mark every other feature in the history of our State, have extended, with the same beneficial effects, to our *legislation*. The same habit of passing laws to meet *special* cases, and to obviate *present* inconveniences, which obtained at first, through necessity, has never been wholly shaken off; and one cannot but feel surprise at the great number of acts which are forced through at every session, at the suggestion

of individual interest, or to subserve purposes of temporary expediency, without reference to, and often to the sacrifice of, the public good.

Laws which, when adopted, were complete, and covered the entire subject matter to which they related, have become buried beneath an accumulated mass of distinct amendatory acts, by which they have been partially repealed, some of their provisions superceded, changed and subjected to new constructions. The same identical matters have been passed upon in laws enacted at different times, until, comparing one with another, sections have become interwoven, involved and contradictory, rendering it impossible to ascertain, without judicial construction, the real intention of the legislature. Scarcely a single act, as originally passed, remained untouched; and to ascertain what was really the law upon any particular point, it became indispensable for the legal inquirer to travel through the whole labyrinth of past legislation, without even the aid, in most cases, of intelligible indexes to the volumes in which the laws were to be found.

Such a state of things could not but be productive of serious confusion and embarrassment. Magistrates and others, charged with the administration of justice, found it difficult to extract the *existing law* from the mass of rubbish with which it was incumbered, and were often led into erroneous judgments, requiring vexatious delays, and a round of expensive litigation for their correction. Each succeeding Legislature seems to have proceeded to the enactment of its assigned *number* and *quantity* of acts, upon the topics usually presented for its action, without reference to what its predecessors had done upon the same subjects; until, at the present time, the laws by which we are governed, lie in broken and unseemly fragments along the course of our legislative history, no more resembling that uniform, harmonious and energetic system of statute law, which should stand prominent among the institutions of a civilized State, than do the collections of fugitive shells which the successive waves of the ocean have cast upon its shore, the most perfect specimen of architectural symmetry and strength.

The necessity of a revision and re-publication of the laws, in a form more consistent with the public wants, and the advanced state of legal science, has long been conceded. No authorized publication had been made since 1833. The population of the State had vastly augmented in the intervening time. Whole counties had been settled and organized, and the number of officers requiring copies of the laws, greatly increased. They could not be supplied, and magistrates and others, frequently found it almost impossible to procure copies even for occasional reference in cases of emergency. It is not surprising, under these circumstances, that the demand for a publication and dissemination of the laws, in some form, was urgent and continued. Even a re-publication, in their imperfect and almost unintelligible state, would have been preferred to the general destitution.

Efforts to remedy the evil, have been made at various sessions of the General Assembly. At its session of 1840-1, the duty of revising the laws upon a plan similar to the present, was imposed upon the Secretary of State and Attorney General, who were required to report the result of their labors at the succeeding ses-

sion. Nothing, however, was done, and at the session of 1842-3, an act passed both Houses, authorizing a *re-publication* of all the existing laws of a general nature, without revision or amendment; but that act, not being approved by the Council of Revision, failed to become a law, and no farther action was had upon the subject.

So much time having been lost, and the necessity of a speedy accomplishment of the work becoming every day more apparent, the undersigned, at the suggestion of His Excellency, Governor FORD, commenced in April, 1844, the compilation of the chapters comprised in this volume.

On the meeting of the Legislature, the subject was brought to its notice by the Executive; and, in answer to a call of the House of Representatives, a communication explanatory of the nature, extent, and progress of the work, was submitted to that body. After much delay, the following preamble and resolutions, having passed the House, were, on the 18th of January, 1845, concurred in by the Senate:—

“WHEREAS, a revision and re-publication of such laws of this State of a general nature, as are now in force, together with such laws of a general nature as may be passed at the present session of the General Assembly, are indispensably necessary, both to supply the public wants and to render the law more plain and intelligible:—*And whereas*, information has been received from the Executive, that such revision or compilation has been commenced by M. BRAYMAN, and is so near its completion that the same can be presented to the Legislature, and acted upon at its present session: Therefore,

“1. *Resolved, by the House of Representatives, the Senate concurring herein*, That the said M. BRAYMAN be appointed and authorized to proceed and complete his said revision and compilation of the laws of this State as speedily as possible, upon the plan adopted, as specified in his communication to the Governor.

“2. *Resolved*, That said work shall be done under the joint direction and supervision of the judiciary committees of the Senate and House of Representatives, to whom it shall be submitted as rapidly as the chapters thereof are in readiness.

“3. *Resolved*, That said joint committee, or a sub-committee which such joint committee may appoint from their own number, shall diligently examine and compare the same, and cause to be made such corrections and alterations as they shall deem necessary to render such laws full, perfect and consistent; and so as to reduce the statute laws of this State of a general nature, to a compact code, conveniently divided into chapters and sections, and arranged in alphabetical order. And it shall be the duty of the reviser, to insert appropriately in the work, such alterations and amendments as such committee shall suggest, not inconsistent with the spirit and meaning of the law.

“4. *Resolved*, That all acts of a general nature, passed or to be passed, at the present session of the General Assembly, shall be incorporated in such revision, to be inserted in the several parts and chapters thereof, to which such acts, or their several parts, appropriately belong.

“5. *Resolved*, That the said M. BRAYMAN be required to submit to said committee, such portion of said work as is already completed; and to prepare and submit the remainder thereof, as speedily as the same shall be needed by said joint committee for examination; and that the whole shall be completed, and the last chapter thereof ready for the action of said committee, by the tenth day of February next. And the said committee shall report said work in chapters, as soon as the same are examined and approved, and in sufficient time to be acted upon by the General Assembly at its present session—the manner of reporting said work to the two Houses to be as follows: The first chapter to the Senate, the second to the House, and and so on alternately, that loss of time may be avoided.”

In accordance with the foregoing resolutions, the work was submitted to the joint committee designated, consisting of the following gentlemen:—Messesrs. CAVARLY, DOUGHERTY, DAVIS, FORMAN, WEBB, ALLEN, and CONSTABLE, of the *Senate*, and Messrs. MANNING, BENEDICT, LOGAN, JANNEY, STRONG, YATES, BOYAKIN, LOTT, and DENNING, of the *House of Representatives*. When it is considered, that the joint committee was not charged with this weighty addition to its duties, until a late period of an exciting session—that it was composed of leading and active members of the two Houses, who had their full share of the burden of ordinary legislation to sustain, and scarcely any leisure to devote to the subject, it cannot but be highly creditable to their energy and zeal for the attainment of a public good, that they made an examination of the entire work, and submitted it to the General Assembly, in time for its adoption, in the form in which it is now presented to the public.

The chapters were presented to the Houses, and by them passed, separately, at different times; but received the approval of the Council of Revision, at one time, as one entire act; and were intended to be contemporaneous in their operation. The only exception, is in the case of chapter 54, title “INTEREST,” which took effect on the first of May, and such sections of chapter 90 as related to the publication of the work. In connexion with these, it may be well to mention, that chapters 89 and 98, entitled “REVENUE” and “SCHOOLS,” were passed as acts of the session, and are, by a special provision, incorporated as chapters in their proper order, (see pages 473-4.) Section 80, in chapter 98, was repealed after the passage of the act, and is omitted from the present compilation.

Owing to the fact, that most of the acts of a general nature were not finally acted upon until near the close of the session, and after the chapters had mostly gone beyond the reach of revision, but few of them are incorporated in those chapters, according to the original design. Such as *were* so incorporated, are repealed in chapter 90, and not published in the appendix, while such as were *not* incorporated, remain in force, and are published in the appendix. Such other laws of a general nature, passed at previous sessions, as were not incorporated, and are essential to a proper understanding of the matters comprised in the chapters and acts, are also published in the appendix. Sundry laws of the United States, on subjects of general interest and daily reference, and a tabular statement of the

times and places of holding courts in the several judicial circuits, are given. They will be found convenient to all, especially to members of the bar, and others concerned in the administration of justice. The analytical notes at the heads of the chapters, have been prepared with some care, and will be found a useful aid in the examination of their contents. The index involved a greater amount of labor and research, than one (as in the present case) destitute of experience, could anticipate. It will be found sufficiently *voluminous*, though less perfect than desired, owing to want of time to correct its arrangement, and to classify its various references, in a more natural order under their appropriate heads. It is believed that no errors have occurred in the execution of the work, which change or obscure the meaning of the text. Those of a merely typographical character, which, in the most carefully corrected publications, escape detection, will, when discovered, suggest their own correction to the mind of the observing reader.

That none may be disappointed, from having expected too much from this work, it is proper to say here, that it is by no means, such a full and radical revision, or even compilation, of our laws, as was desired, or at first intended. At its commencement, a wider range was taken—alterations, additions, and innovations, when deemed expedient, were freely made, having in view the construction of a full code of statute law, corresponding with those adopted by neighboring States. But when the subject was acted upon by the Legislature, and presented to the joint committee, full two-thirds of the session had already passed away—the ordinary business of legislation remained to be perfected, and it became impossible to compress a work requiring *months* for its accomplishment, into the space of a few days. The original design was therefore contracted, and the only object possible of attainment was sought—that of collating and arranging the laws of the State, in accordance with their true spirit and intention, making them plain and intelligible, and relieving them from that smothering load of useless verbiage, contradictions and doubts, which had been accumulating through so many years of changing legislation. The object became, not so much to make *new* laws, or to depart materially from the spirit and meaning of those already existing, as to prune away excrescences, reconcile contradictions, and condense and arrange in convenient order, all that remained in force at the time. Every thing that had been repealed or superseded, was omitted—conflicting provisions were reconciled, and sections which were obscure, involved, or doubtful in their meaning, were re-written, so as to express the evident intention of the Legislature, and conform to constructions fixed by the Supreme Court. These desired ends, it is apprehended, have not been fully attained, more particularly in some of the later chapters, which were thrown together with such haste as to preclude elaborate examination, and to prevent that attention to grammatical accuracy and correctness of style, which are so necessary to the usefulness, to say nothing of the literary merit, of a work of this character. As far as possible and consistent with duty, errors thus occurring have been carefully corrected, during the progress of the several chapters through the press.

It will be apparent that *some* of the chapters contain provisions of law enacted in early times, but which have no application to our present circumstances, and which, if presented as separate propositions, would not have been approved. With regard to such, it is sufficient to say, that their incorporation was acquiesced in, because they were a part of the existing law, and because time was not at the command of the Legislature, to discuss and settle every objection which might well have been raised.

If, after much labor and research on the part of those engaged in bringing this compilation to its present shape, performed in haste, and amidst circumstances so unfavorable to calm and deliberate investigation, it shall be found to promote the public good, satisfy the wants of the people for the time, and aid in establishing the jurisprudence of the State upon a more firm and well-defined basis, surely none will regret that the effort has been made.

M. BRAYMAN.

SPRINGFIELD, *September 25, 1845.*

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DECLARATION OF INDEPENDENCE.

IN CONGRESS, JULY 4, 1776.

The unanimous declaration of the thirteen United States of America.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires, that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained, and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies, at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time after such dissolutions to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has created a multitude of new offices, and sent hither swarms of officers to harrass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitutions, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them by a mock trial from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us, without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas, to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress, in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and

magnanimity; and we have conjured them by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connexion and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world, for the recitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain is, and ought to be, totally dissolved; and that as free and independent States they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of Congress, engrossed, and signed by the following members :

JOHN HANCOCK.

New Hampshire,

JOSIAH BARTLETT,
WILLIAM WHIPPLE,
MATTHEW THORNTON.

Massachusetts Bay,

SAMUEL ADAMS,
JOHN ADAMS,
ROBERT TREAT PAINE,
ELBRIDGE GERRY.

Rhode Island, &c.,

STEPHEN HOPKINS,
WILLIAM ELLERY.

Connecticut,

ROGER SHERMAN,
SAMUEL HUNTINGTON,
WILLIAM WILLIAMS,
OLIVER WOLCOTT.

New York,

WILLIAM FLOYD,
PHILIP LIVINGSTON,
FRANCIS LEWIS,
LEWIS MORRIS.

New Jersey,

RICHARD STOCKTON,
JOHN WITHERSPOON,
FRANCIS HOPKINSON,
JOHN HART,
ABRAHAM CLARK.

Pennsylvania,

ROBERT MORRIS,
BENJAMIN RUSH,
BENJAMIN FRANKLIN,
JOHN MORTON,
GEORGE CLYMER,

JAMES SMITH,
GEORGE TAYLOR,
JAMES WILSON,
GEORGE ROSS.

Delaware,

CÆSAR RODNEY,
GEORGE READ,
THOMAS M'KEAN.

Maryland,

SAMUEL CHASE,
WILLIAM PACA,
THOMAS STONE,
CHARLES CARROLL, of Carrollton.

Virginia,

GEORGE WYTHE,
RICHARD HENRY LEE,
THOMAS JEFFERSON,
BENJAMIN HARRISON,
THOMAS NELSON, Jr.
FRANCIS LIGHTFOOT LEE,
CARTER BRAXTON.

North Carolina,

WILLIAM HOOPER,
JOSEPH HEWES,
JOHN PENN.

South Carolina,

EDWARD RUTLEDGE,
THOMAS HEYWARD, Jr.
THOMAS LYNCH, Jr.
ARTHUR MIDDLETON.

Georgia,

BUTTON GWINNETT,
LYMAN HALL,
GEORGE WALTON.

ARTICLES OF CONFEDERATION

AND PERPETUAL UNION,

Between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE I.

Style of Confederacy.

ARTICLE II.

State sovereignty.

ARTICLE III.

League, &c.

ARTICLE IV.

Rights of citizenship; privileges of trade; duties and restrictions; fugitives from justice; credit to acts of States.

ARTICLE V.

Delegates in Congress; their number; term; how paid; manner of voting; freedom of speech; privileges of members.

ARTICLE VI.

States may not make treaties; officers not to accept of presents; titles of nobility not to be granted; States not to make treaties with each other without consent of Congress; States not to levy duties in contravention of treaties; States not to keep ships or armies without consent of Congress; shall organize militia, keep arms, &c.; shall not engage in war, unless invaded; nor grant commissions, except in time of war, unless to suppress piracy.

ARTICLE VII.

When forces raised by a State, what officers to be commissioned by State.

ARTICLE VIII.

Expenses of Government to be defrayed by a land tax, to be laid and levied by the States.

ARTICLE IX.

Powers of Congress; war; peace; treaties; prohibitions; powers of States not to be abridged; State courts.

Mode of appealing to Congress, in differences between States; mode of adjudication; controversies concerning private rights; coin; weights and measures; trade; Indian affairs; post offices; appointment of officers of army and navy; rules for army and navy; committee of the States; its duties and powers.

Power of United States to engage in war, &c., regulated; adjournment of Congress; publication of its proceedings.

ARTICLE X.

Power of the committee of States in recess of Congress.

ARTICLE XI.

Admission of Canada.

ARTICLE XII.

Existing debts assumed.

ARTICLE XIII.

States to abide by acts of Confederation; union perpetual; alterations; ratification.

ARTICLE I.

The style of this confederacy shall be, "THE UNITED STATES OF AMERICA."

ARTICLE II.

Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled.

ARTICLE III.

The said States hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade or any other pretence whatever.

ARTICLE IV.

The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, (paupers, vagabonds, and fugitives from justice excepted,) shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions, as the inhabitants thereof respectively: *Provided*, That such restriction shall not extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhabitant: *Provided also*, that no imposition, duties or restriction shall be laid by any State on the property of the United States, or either of them.

If any person, guilty of or charged with treason, felony, or other high misdemeanor, in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor, or executive power of the State from which he fled, be delivered up, and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ARTICLE V.

For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the Legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emoluments of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech, and debate in Congress, shall not be impeached or questioned in any other court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

ARTICLE VI.

No State, without the consent of the United States in Congress assembled, shall send an embassy to, or receive an embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or State; nor shall any person, holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince or foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince or State, in pursuance of any treaties already proposed by Congress to the Courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defence of such State or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only, as in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide, and have constantly ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled; and then only against the kingdom or State, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled; unless such State be infested by pirates; in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ARTICLE VII.

When land forces are raised by any State for the common defence, all officers of, or under the rank of colonel, shall be appointed by the Legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct; and all vacancies shall be filled up by the State which first made the appointment.

ARTICLE VIII.

All charges of war and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled,

shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State granted to, or surveyed for, any person, as such land, and the buildings and improvements thereon, shall be estimated according to such mode as the United States in Congress assembled shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States, within the time agreed upon by the United States in Congress assembled.

ARTICLE IX.

The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances: *Provided*, That no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally, appeals in all cases of captures: *Provided*, That no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States, concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following:—Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall in the presence of Congress be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear, and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or, being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed in the manner before prescribed, shall be final and conclusive. And if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall, in like manner, be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress, for the security of the parties concerned: *Provided*, That every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the Judges of the Supreme or Superior court of the State where the cause shall be tried, “well and truly to hear

and determine the matter in question, according to the best of his judgment, without favor, affection or hope of reward:" *Provided also*, That no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more States, whose jurisdiction, as they may respect such lands and the States which passed such grants, are adjusted, the said grants, or either of them, being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade, and managing all affairs with the Indians, not members of any of the States: *Provided*, That the legislative right of any State within its own limits be not infringed or violated—establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled, shall have authority to appoint a committee to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States, under their direction—to appoint one of their number to preside: *Provided*, That no person be allowed to serve in the office of President more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective States, an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisitions shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled, but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped, in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number cannot be safely spared out of the same; in which case, they shall raise, officer, clothe, arm and equip as many of such extra number as they judge can be safely spared; and the officers and men, so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor

emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof, relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

ARTICLE X.

The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with: *Provided*, That no power be delegated to the said Committee, for the exercise of which, by the articles of confederation, the voice of nine States in the Congress of the United States assembled, is requisite.

ARTICLE XI.

Canada, acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to, all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ARTICLE XII.

All bills of credit emitted, moneys borrowed, and debts contracted, by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ARTICLE XIII.

Every State shall abide by the determination of the United States in Congress assembled, on all questions which, by this confederation, are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislature of every State.

And whereas, it has pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation, and perpetual union: Know YE, That we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained; and we do further solemnly plight

and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions which, by the said confederation, are submitted to them; and that the articles thereof shall be inviolably observed by the States we respectively represent; and that the union shall be perpetual.

In witness whereof, we have hereunto set our hands, in Congress, done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the Independence of America.

On the part and behalf of the State of New Hampshire,

JOSIAH BARTLETT,
JOHN WENTWORTH, JR., Aug. 8, 1778.

On the part and behalf of the State of Massachusetts Bay,

JOHN HANCOCK,
SAMUEL ADAMS,
ELBRIDGE GERRY,
FRANCIS DANA,
JAMES LOVELL,
SAMUEL HOLTEN.

On the part and behalf of the State of Rhode Island and Providence Plantations,

WILLIAM ELLERY,
HENRY MARCHANT,
JOHN COLLINS.

On the part and behalf of the State of Connecticut,

ROGER SHERMAN,
SAMUEL HUNTINGTON,
OLIVER WOLCOTT,
TITUS HOSMER,
ANDREW ADAMS.

On the part and behalf of the State of New York,

JAS. DUANE,
FRA. LEWIS,
WM. DUER,
GOUV. MORRIS.

On the part and behalf of the State of New Jersey,

JNO. WITHERSPOON,
NATH. SCUDDER, Nov. 26, 1778.

On the part and behalf of the State of Pennsylvania,

ROBT. MORRIS,
DANIEL ROBERDEAU,
JONA. BAYARD SMITH,
WILLIAM CLINGAN,
JOSEPH REED, 22d July, 1778.

On the part and behalf of the State of Delaware,

THOMAS McKEAN, Feb. 13, 1779.
JOHN DICKINSON, May 5th, 1779.
NICHOLAS VAN DYKE.

On the part and behalf of the State of Maryland,

JOHN HANSON, March 1, 1781,
DANIEL CARROLL, do.

On the part and behalf of the State of Virginia,

RICHARD HENRY LEE,
JOHN BANISTER,
THOMAS ADAMS,
JNO. HARVIE,
FRANCIS LIGHTFOOT LEE.

On the part and behalf of the State of North Carolina,

JOHN PENN, July 21st, 1778,
CORN. HARNETT,
JNO. WILLIAMS.

On the part and behalf of the State of South Carolina,

HENRY LAURENS,
WILLIAM HENRY DRAYTON,
JNO. MATTHEWS,
RICHARD HUTSON,
THOMAS HEYWARD, jr.

On the part and behalf of the State of Georgia,

JNO. WALTON, 24th July, 1778.
EDWD. TELFAIR,
EDWD. LANGWORTHY.

ORDINANCE OF 1787:

FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES NORTH-WEST OF THE RIVER OHIO.

SECTION.

1. Temporary government.
2. Rules of descent and of inheritance; wills and devices, customs, &c.
3. Governor of Territory; his term, and qualifications.
4. Secretary, his term, duties, residence and qualifications; court, its jurisdiction; residence, qualifications and terms of Judges.
5. Mode of adopting laws for Territory.
6. Governor to be commander-in-chief; inferior officers how appointed.
7. Magistrates, how appointed.
8. Laws to prevent crimes; divisions of territory.
9. Representatives in General Assembly how elected; their qualifications.
10. Their term; vacancies how filled.
11. General Assembly, how constituted; legislative council how chosen; term of members; powers and duties of Governor and Assembly.
12. Oath of office; General Assembly to elect a delegate to Congress.
13. Objects of this ordinance.
14. Declaratory clause.

ARTICLE I.

Religious freedom guaranteed.

ARTICLE II.

Rights secured of habeas corpus; trial by jury; representation; bail; fines; ex post facto laws.

ARTICLE III.

Education to be encouraged; faith with the Indian tribes preserved.

ARTICLE IV.

States formed in this territory to be part of confederacy; to pay their portion of national debts and taxes; Legislatures not to interfere with title of U. S. to soil; nor tax public lands; nor non-residents higher than residents; navigable waters to be free.

ARTICLE V.

Not less than three, nor more than five States to be formed in the territory; Illinois, how bounded; Indiana; Ohio; Michigan; having 60,000 free inhabitants, to be admitted into the Union; form constitutions; form of Government to be republican; may be admitted before they shall have 60,000, if Congress consents.

ARTICLE VI.

Slavery and involuntary servitude not allowed, except as a punishment for crime; fugitives to be restored; resolution of 23d April, 1784, repealed.

1. BE IT ORDAINED, by the United States in Congress assembled, That the said territory, for the purposes of temporary Government, be one district; subject, however, to be divided into two districts, as future circumstances may in the opinion of Congress, make it expedient.

2. Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among their children, and the decendants of a deceased child in equal parts, the decendants of a deceased child or grand child to take the share of their deceased parent in equal parts among them: and where there shall be no children or decendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower,

shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed and delivered, by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts and registers, shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincents and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

3. Be it ordained by the authority aforesaid, That there shall be appointed, from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress: he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

4. There shall be appointed, from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every six months, to the secretary of Congress: There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behaviour.

5. The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district; and report them to Congress, from time to time; which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

6. The governor for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

7. Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

8. For the prevention of crimes and injuries, the laws to be adopted or made, shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

9. So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority,

with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: *Provided*, That, for every five hundred free male inhabitants, there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature: *Provided*, That no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and in either case, shall likewise hold in his own right, in fee simple, two hundred acres of land within the same: *Provided also*, That a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being a resident in the district, or the like freehold and two year's residence in the district, shall be necessary to qualify a man as an elector of a representative.

10. The representatives thus elected shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

11. The general assembly, or legislature, shall consist of the governor, legislative council, and a House of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum; and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid: and whenever a vacancy shall happen in the council, by death or removal from office, the House of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and commission for the residue of the term: and every five years, four months at least before the expiration of the time of service of the members of council, the said House shall nominate ten persons, qualified as aforesaid, and return their names to Congress; five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council and House of representatives, shall have authority to make laws, in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the House, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve, the general assembly, when in his opinion it shall be expedient.

12. The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office; the governor before the president of Congress, and all other officers before the governor. As soon as the legislature shall be formed in the district, the council and House assembled, in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting during this temporary government.

13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and constitution, are erected; to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

14. It is hereby ordained and declared, by the authority aforesaid, That the following articles shall be considered as articles of compact, between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

ARTICLE I.

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ARTICLE II.

The inhabitants of the said territory shall always be entitled to the benefits of the writs of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with, or affect private contracts or engagements, bona fide, and without fraud previously formed.

ARTICLE III.

Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorised by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ARTICLE IV.

The said territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the Legislatures of the district or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The Legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary, for securing the title in such soil, to the bona fide purchasers. No tax shall be imposed on lands the property of the

United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ARTICLE V.

There shall be formed in the said territory, not less than three, nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: The western State in the said territory, shall be bounded by the Mississippi, the Ohio, and the Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided however*, And it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent constitution and State government: *Provided*, The constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles, and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

ARTICLE VI.

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the twenty-third of April, one thousand seven hundred and eight-four, relative to the subject of this ordinance, be, and the same are hereby repealed, and declared null and void.

Done by the United States, in Congress assembled, the thirteenth day of July, in the year of our Lord one thousand seven hundred and eighty-seven, and of their sovereignty and independence the twelfth.

WILLIAM GRAYSON, *Chairman.*

CHARLES THOMPSON, *Secretary.*

CONSTITUTION OF THE UNITED STATES.

PREAMBLE.

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3. Senators, how and by whom chosen; how classified; qualifications; President of Senate, his right to vote; officers of Senate, how chosen; power to try impeachments; when President is tried, Chief Justice to preside; extent of judgment.
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ARTICLE

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6. Further provisions securing rights of accused persons.
7. Right of trial by jury.
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9. Construction of Constitution.
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11. Judicial construction of Constitution.
12. Manner of choosing President and Vice President; qualification for Vice President.

PREAMBLE.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION I.

1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION II.

1. The House of Representatives shall be composed of members chosen every second year, by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

2. No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative: and until such enumeration shall be made, the State of *New Hampshire* shall be entitled to choose three; *Massachusetts*, eight; *Rhode Island and Providence Plantations*, one; *Connecticut*, five; *New York*, six; *New Jersey*, four; *Pennsylvania*, eight; *Delaware*, one; *Maryland*, six; *Virginia*, ten; *North Carolina*, five; *South Carolina*, five; and *Georgia*, three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION III.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class, shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

3. No person shall be a Senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be president of the Senate; but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a president, *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall, nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION IV.

1. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State, by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

1. Each House shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION VI.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest, during their attendance at the session of their respective Houses, and in going to or returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

SECTION VII.

1. All bills for raising a revenue shall originate in the House of Representatives ; but the Senate may propose or concur with amendments as on other bills.

2. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States ; if he approve he shall sign it ; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays ; and the names of the persons voting for and against the bill, shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment, prevent its return ; in which case, it shall not be a law.

3. Every order, resolution or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment) shall be presented to the President of the United States ; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

The Congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises ; to pay the debts, and provide for the common defence and general welfare of the United States ; but all duties, imposts, and excises, shall be uniform throughout the United States :

2. To borrow money on the credit of the United States :

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes :

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States :

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures :

6. To provide for the punishment of counterfeiting the securities and current coin of the United States :

7. To establish post offices and post roads :

8. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries :

9. To constitute tribunals inferior to the Supreme Court : To define and punish piracies and felonies committed on the high seas, and offences against the law of nations :

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water :

11. To raise and support armies ; but no appropriation of money to that use, shall be for a longer term than two years :

12. To provide and maintain a navy :

13. To make rules for the government and regulation of the land and naval forces :

14. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions :

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

16. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings:—and

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION IX.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder or *ex post facto* law, shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office or title of any kind whatever, from any king, prince, or foreign State.

SECTION X.

1. No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. [*The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then from the five highest on the list, the said House shall, in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors, shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice President.]

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of President; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States."

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation:

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

SECTION II.

1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to

the duties of their respective offices; and he shall have power to grant reprieves and pardons, for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided, two-thirds of the Senators present concur: and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers, as they shall think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

SECTION III.

1. He shall from time to time, give to the Congress information of the state of the Union; and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all officers of the United States.

SECTION IV.

1. The President, Vice President, and all civil officers of the United States, shall be removed from office, on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION I.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts, as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECTION II.

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases, affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming lands under grants of different States; and between a State or the citizens thereof, and foreign States, citizens or subjects.

2. In all cases, affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places, as the Congress may by law have directed.

SECTION III.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECTION I.

1. Full faith and credit shall be given, in each State, to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION II.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION IV.

1. The United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

1. The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: *Provided*, That no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby; any thing in the constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

1. The ratification of the conventions of nine States, shall be sufficient for the establishment of this constitution between the States so ratifying the same.

Done in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord, one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, *President,*
and deputy from *Virginia.*

New Hampshire,

JOHN LANGDON,
NICHOLAS GILMAN.

Massachusetts,

NATHANIEL GORHAM,
RUFUS KING.

Connecticut,

WILLIAM SAMUEL JOHNSON,
ROGER SHERMAN.

New York,

ALEXANDER HAMILTON.

New Jersey,

WILLIAM LIVINGSTON,
DAVID BREARLY,
WILLIAM PATTERSON,
JONATHAN DAYTON.

Pennsylvania,

BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,
GEORGE CLYMER,
THOMAS FITZSIMONS,
JARED INGERSOLL,
JAMES WILSON,
GOVERNEUR MORRIS.

Delaware,

GEORGE READ,
GUNNING BEDFORD, JR.,
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOM.

Maryland,

JAMES M'HENRY,
DANIEL OF ST. THOMAS JENIFER,
DANIEL CARROLL.

Virginia,

JOHN BLAIR,
JAMES MADISON, JR.

North Carolina,

WILLIAM BLOUNT,
RICHARD DOBBS SPAIGHT,
HUGH WILLIAMSON.

South Carolina,

J. RUTLEDGE,
CHAS. COTESWORTH PINCKNEY,
CHAS. PINCKNEY,
PIERCE BUTLER.

Georgia,

WILLIAM FEW,
ABM. BALDWIN,

Attest:

WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated: and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.

1. The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate; the president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President: a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

[NOTE.—In former editions of the laws of Illinois, there is an amendment printed as article thirteen, prohibiting citizens from accepting titles of nobility, &c., from foreign governments. But by a message of the President of the United States of February 4, 1818, in answer to a resolution of the House of Representatives, it appears that this amendment had been ratified by only twelve States, and therefore had not been adopted. See vol. 4, of the printed papers of the first session of the 15th Congress, No. 76.]

AN ORDINANCE,

ACCEPTING CERTAIN PROPOSITIONS MADE BY CONGRESS,
APRIL 18, 1818.

PREAMBLE.

Propositions of Congress: sixteenth section granted for schools:
Salt springs granted to the State:
Also, 5 per cent. on sales of public lands:

One township granted for seminary.
Lands sold to be exempt from taxation for five years, bounty lands for three years; non-resident lands not taxed higher than others.
Proposition of Congress accepted.

WHEREAS, the Congress of the United States, in the act entitled "An act to enable the people of the Illinois Territory to form a Constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, passed the 18th of April, 1818," have offered to this Convention for their free acceptance or rejection, the following propositions, which, if accepted by the Convention are to be obligatory upon the United States, viz:

1st. That section numbered sixteen in every township, and when such section has been sold, or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of the inhabitants of such township for the use of schools:

2d. That all salt springs within such State, and the lands reserved for the use of the same, shall be granted to the said State for the use of the said State, and the same to be used under such terms and conditions and regulations as the Legislature of said State shall direct: *Provided*, The legislature shall never sell nor lease the same for a longer period than ten years at any one time:

3d. That five per cent. of the nett proceeds of the lands lying within such State, and which shall be sold by Congress from and after the first day of January, one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for the purposes following, viz: Two-fifths to be disbursed under the direction of Congress, in making roads leading to the State; the residue to be appropriated by the Legislature of the State for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university:

4th. That thirty-six sections or one entire township, which shall be designated by the President of the United States, together with the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the Legislature of the said State, to be appropriated solely to the use of such seminary by the said Legislature.

And whereas, the four foregoing propositions are offered on the condition that this convention shall provide by ordinance, irrevocable without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of January, 1819, shall remain exempt from any tax laid by order, or under the authority of the State, whether for State, county or township, or any other purpose whatever, for the term of five years, from and after the day of sale. And further, that the bounty lands granted, or hereafter to be granted for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt as aforesaid from all taxes for the term of three years from and after the date of the patents respectively; and that all the lands belonging to the citizens of the United States, residing without the said State shall never be taxed higher than lands belonging to persons residing therein.

Therefore, this convention, on behalf of, and by the authority of the people of the State, do accept of the foregoing propositions; and do further ordain and declare, that every and each tract of land sold by the United States, from and after the first day of January, 1819, shall remain exempt from any tax laid by order, or under any authority of the State, whether for State, county, or township, or any purpose whatever, for the term of five years from and after the day of sale. And that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt, as aforesaid, from all taxes for the term of three years from and after the date of the patents respectively; and that all the lands belonging to the citizens of the United States, residing without the said State, shall never be taxed higher than lands belonging to persons residing therein. And this convention do further ordain and declare, that the foregoing ordinance shall not be revoked without the consent of the United States.

Done in convention at Kaskaskia, the twenty-sixth day of August, in the year of our Lord, one thousand eight hundred and eighteen, and of the Independence of the United States of America, the forty-third.

JESSE B. THOMAS,
President of the Convention.

ATTEST:

WM. C. GREENUP,
Secretary of the Convention.

CONSTITUTION OF ILLINOIS.

PREAMBLE.

Boundaries of the State.

ARTICLE I.

SECTION

1. Distribution of powers.
2. Limitation of powers of each department.

ARTICLE II.

1. Legislative power vested in a General Assembly; elective.
2. First election when to be held, and thereafter.
3. Qualifications of representatives.
4. Senators, how elected.
5. Number and apportionment of senators and representatives.
6. Qualifications of senators.
7. The Houses to choose their officers; to judge of the qualifications of members; adjournments; quorum; compel attendance of members.
8. To keep and publish journals; yeas and nays.
9. Dissent and protest of members.
10. Rules of proceeding; punishment and expulsion of members.
11. Vacancies, writs of election to fill.
12. Privileges of members.
13. Power of Houses to punish for contempt.
14. Houses to sit with open doors, except, &c.; separate adjournments regulated.
15. Bills may originate in either House.
16. Bills to be read on three different days, unless rule suspended; when passed, to be signed by Speakers.
17. Enacting clause.
18. Salaries limited; of Governor, of Secretary of State.
19. Members not eligible to offices created during their term of membership.
20. No money drawn unless appropriated.
21. Publication of receipts and expenditures.
22. House of Representatives to impeach; Senate to try; members sworn; two-thirds must concur to convict.
23. Officers liable to impeachment; extent of judgment.
24. First session, when to be held, and thereafter.
25. Certain officers of this State and of United States ineligible to a seat in either House.
26. Oaths of office; and to support constitution.
27. Qualifications of voters.
28. Manner of voting.
29. Voters privileged from arrest while at elections, except, &c.
30. Power of General Assembly to exclude from electoral privileges, for bribery, &c.
31. Census to be taken every fifth year after 1820.
32. Revenue bills to originate in the House.

ARTICLE III.

1. Executive power vested in Governor.
2. First election, and thereafter; Governor, how chosen; returns, how compared and published; if no choice, assembly to elect; contested elections.

SECTION

3. Qualifications, and official term of Governor.
4. To communicate to General Assembly.
5. Power to pardon, &c.
6. His salary.
7. May call for information; shall see laws executed.
8. He may fill vacancies.
9. May convene General Assembly.
10. Shall be commander-in-chief of army, &c.
11. Sheriffs and coronors; their qualifications and terms of office.
12. If Houses of General Assembly disagree, Governor may adjourn them.
13. Lieutenant Governor, how chosen; his term and qualifications; manner of voting for.
14. Shall be Speaker of the Senate; may debate; vote; casting vote.
15. When he fills vacancy of Governor, Senate may elect a Speaker who, if Lieutenant Governor is disqualified, shall administer the Government.
16. Compensation of Lieutenant Governor.
17. Senate to be convened, if Lieutenant die or remove while acting as Governor.
18. If Governor is disqualified, Lieutenant Governor to act, until next general election.
19. Council of Revision; to revise bills; if they return bills without approval, they may be passed by majority of all members elected.
20. Secretary of State, how appointed; his duties.
21. Treasurer and public printer, how elected.
22. Governor to appoint officers, &c.

ARTICLE IV.

1. Judicial power; how vested.
2. Supreme Court; where held; its jurisdiction.
3. How constituted.
4. Judges, how appointed; term of office; their duties.
5. Judges of inferior courts; term of office; how removed; proviso; salary.
6. Clerks of courts, how appointed.
7. Style and conclusion of process and prosecutions.
8. Justices of the peace, how commissioned.

ARTICLE V.

1. Militia, of what persons composed, &c.
2. Conscientious scruples, equivalent for exemption on account of.
3. Officers, how elected.
4. Brigadier and major generals, how elected.
5. Militia officers, how commissioned; term of office.
6. Militia privileged from arrest in certain cases.

ARTICLE VI.

1. Slavery and servitude; provisions concerning.
2. Persons bound to labor in other States, not to be hired in this State, except, &c.; emancipation effected by violation of this article.
3. Provisions concerning persons held by contract or indentures, and their children.

ARTICLE VII.

SECTION

1. Mode of amending this constitution, defined.

ARTICLE VIII.

PREAMBLE.

1. Declaration of rights.
2. Power; government; its objects.
3. Religious freedom; liberty of conscience.
4. No religious tests.
5. Elections to be free.
6. Trial by jury.
7. Security of persons and property from searches and seizures.
8. Security of liberty and property; common lands; proviso.
9. Criminal prosecutions; rights of accused.
10. Proceedings by information not allowed, except, &c.
11. No person twice tried for same offence; private property not to be taken, except, &c.
12. Remedies; rights.
13. Bail; *habeas corpus*.
14. Penalties proportioned to offence.
15. Concerning imprisonment for debt.
16. *Ex post facto* law; contracts; corruption of blood; forfeiture of estate.

SECTION

17. Transportation forbidden.
18. Recurrence to fundamental principles necessary.
19. Right of people to instruct, petition, &c.
20. Mode of levying taxes.
21. Banks.
22. Freedom of the press, and of speech.
23. Truth may be given in evidence; jury to determine law and fact.

SCHEDULE.

1. Change of government.
2. Fines, &c., due the Territory, belong to the State.
3. Defaulting sheriffs and collectors ineligible to re-election.
4. County commissioners.
5. Officers of Territory to hold office until superceded.
6. State seal.
7. Justice may administer official oaths.
8. Apportionment of Senators and Representatives.
9. First election, how conducted.
10. Auditor, Attorney General, &c., how appointed.
11. Duelling.
12. Qualification of voters at first election.
13. Seat of Government.
14. Qualifications of Lieutenant Governor.

The people of the Illinois Territory, having the right of admission into the General Government as a member of the Union, consistent with the Constitution of the United States, the ordinance of Congress of 1787, and the law of Congress approved, April 18th, 1818, entitled "An act to enable the people of the Illinois Territory to form a constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes;" in order to establish justice, promote the welfare and secure the blessings of liberty to themselves and their posterity, do by their representatives in convention, ordain and establish the following Constitution or form of government; and do mutually agree with each other to form themselves into a free and independent State by the name of the State of ILLINOIS. And they do hereby ratify the boundaries assigned to such State by the act of Congress aforesaid, which are as follows, to wit: Beginning at the mouth of the Wabash river, thence up the same, and with the line of Indiana to the north-west corner of said State; thence east with the line of the same State to the middle of Lake Michigan; thence north along the middle of said lake, to the north latitude forty-two degrees and thirty minutes; thence west to the middle of the Mississippi river; and thence down along the middle of that river to its confluence with the Ohio river; and thence up the latter river along its north-western shore to the beginning.

ARTICLE I.

CONCERNING THE DISTRIBUTION OF THE POWERS OF GOVERNMENT.

SEC. 1. The powers of the government of the State of Illinois, shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judiciary, to another.

SEC. 2. No person or collection of persons, being one of those departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.

ARTICLE II.

SEC. 1. The legislative authority of this State, shall be vested in a General Assembly which shall consist in a Senate and House of Representatives, both to be elected by the people.

SEC. 2. The first election for Senators and Representatives, shall commence on the third Thursday of September next, and continue for that and the two succeeding days; and the next election shall be held on the first Monday in August, one thousand eight hundred and twenty; and forever after, elections shall be held once in two years, on the first Monday of August, in each and every county, at such places therein as may be provided by law.

SEC. 3. No person shall be a Representative who shall not have attained the age of twenty-one years, who shall not be a citizen of the United States, and an inhabitant of this State: who shall not have resided within the limits of the county or district in which he shall be chosen, twelve months next preceding his election, if such county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts out of which the same shall have been taken, unless he shall have been absent on the public business of the United States or of this State; and who moreover shall not have paid a State or county tax.

SEC. 4. The Senators at their first session herein provided for, shall be divided by lot from their respective counties or districts, as near as can be, into two classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; and those of the second class at the expiration of the fourth year, so that one-half thereof, as near as possible, may be biennially chosen forever thereafter.

SEC. 5. The number of Senators and Representatives shall, at the first session of the General Assembly, holden after the returns herein provided for are made, be fixed by the General Assembly, and apportioned among the several counties or districts to be established by law, according to the number of white inhabitants. The number of Representatives shall not be less than twenty-seven, nor more than thirty-six, until the number of inhabitants within this State shall amount to one hundred thousand; and the number of Senators shall never be less than one-third nor more than one-half of the number of Representatives.

SEC. 6. No person shall be a Senator who has not arrived at the age of twenty-five years, who shall not be a citizen of the United States, and who shall not have resided one year in the county or district in which he shall be chosen immediately preceding his election, if such county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts out of which the same shall have been taken; unless he shall have been absent on the public business of the United States or of this State, and shall not moreover have paid a State or county tax.

SEC. 7. The Senate and House of Representatives, when assembled, shall each choose a speaker and other officers: (the speaker of the Senate excepted:) each House shall judge of the qualifications and elections of its members, and sit upon its own adjournments. Two-thirds of each House shall constitute a quorum, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

SEC. 8. Each House shall keep a journal of its proceedings, and publish them: the yeas and nays of the members, on any question, shall, at the desire of any two of them, be entered on the journals.

SEC. 9. Any two members of either House, shall have liberty to dissent and protest against any act or resolution which they may think injurious to the public, or to any individual, and have the reasons of their dissent entered on the journals.

SEC. 10. Each House may determine the rules of its proceedings, punish its members for disorderly behavior; and with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

SEC. 11. When vacancies happen in either House, the Governor, or the person exercising the powers of Governor, shall issue writs of election to fill such vacancies.

SEC. 12. Senators and Representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest, during the session of the General Assembly, and in going to, and returning from the same, and for any speech or debate in either House, they shall not be questioned in any other place.

SEC. 13. Each House may punish by imprisonment during its session, any person not a member, who shall be guilty of disrespect to the House, by any disorderly or contemptuous behavior in their presence; provided such imprisonment shall not at any one time exceed twenty-four hours.

SEC. 14. The doors of each House, and of committees of the whole, shall be kept open, except in such cases as in the opinion of the House, require secrecy. Neither House shall, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the two Houses shall be sitting.

SEC. 15. Bills may originate in either House, but may be altered, amended, or rejected by the other.

SEC. 16. Every bill shall be read on three different days in each House, unless in case of urgency, three-fourths of the House where such bill is so depending shall deem it expedient to dispense with this rule; and every bill having passed both Houses shall be signed by the Speakers of the respective Houses.

SEC. 17. The style of the laws of this State shall be, "*Be it enacted by the people of the State of Illinois, represented in the General Assembly.*"

SEC. 18. The General Assembly of this State shall not allow the following officers of government greater or smaller annual salaries than as follows, until the year one thousand eight hundred and twenty-four: The Governor, one thousand dollars; and the Secretary of State, six hundred dollars.

SEC. 19. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this State, which shall have been created, or the emoluments of which shall have been increased during such time.

SEC. 20. No money shall be drawn from the treasury but in consequence of appropriations made by law.

SEC. 21. An accurate statement of the receipts and expenditures of the public money, shall be attached to, and published with, the laws, at the rising of each session of the General Assembly.

SEC. 22. The House of Representatives shall have the sole power of impeaching, but a majority of all the members present must concur in an impeachment; all impeachments shall be tried by the Senate; and when sitting for that purpose, the Senators shall be upon oath or affirmation, to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of all the Senators present.

SEC. 23. The Governor, and all other civil officers under this State, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, profit or trust under this State. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

SEC. 24. The first session of the General Assembly shall commence on the first Monday of October next, and forever after, the General Assembly shall meet on the first Monday in December next ensuing the election of the members thereof, and at no other period, unless as provided by this Constitution.

SEC. 25. No judge of any court of law or equity, Secretary of State, attorney general, attorney for the State, register, clerk of any court of record, sheriff or collector, member of either House of Congress, or person holding any lucrative office under the United States or this State, (provided that appointments in the militia, postmasters or justices of the peace shall not be considered lucrative offices) shall have a seat in the General Assembly: nor shall any person holding any office of honor or profit under the government of the United States, hold any office of honor or profit under the authority of this State.

SEC. 26. Every person who shall be chosen or appointed to any office of trust or profit shall, before entering upon the duties thereof, take an oath to support the constitution of the United States and of this State, and also an oath of office.

SEC. 27. In all elections, all white male inhabitants above the age of twenty-one years, having resided in the State six months next preceding the election, shall enjoy the right of an elector; but no person shall be entitled to vote except in the county or district in which he shall actually reside at the time of the election.

SEC. 28. All votes shall be given *viva voce* until altered by the General Assembly.

SEC. 29. Electors shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from the same.

SEC. 30. The General Assembly shall have full power to exclude from the privilege of electing or being elected any person convicted of bribery, perjury or any other infamous crime.

SEC. 31. In the year one thousand eight hundred and twenty, and every fifth year thereafter, an enumeration of all the white inhabitants of the State shall be made in such manner as shall be directed by law.

SEC. 32. All bills for raising a revenue shall originate in the House of Representatives, subject, however, to amendment, or rejection as in other cases.

ARTICLE III.

SEC. 1. The executive power of the State shall be vested in a Governor.

SEC. 2. The first election of Governor shall commence on the third Thursday of September next, and continue for that and the two succeeding days; and the next election shall be held on the first Monday of August, in the year of our Lord one thousand eight hundred and twenty-two. And forever after, elections for Governor shall be held once in four years, on the first Monday of August. The Governor shall be chosen by the electors of the members of the General Assembly, at the same places and in the same manner that they shall respectively vote for members thereof. The returns for every election of Governor shall be sealed up and transmitted to the seat of government by the returning officers, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of a majority of the members of each House of the General Assembly. The person having the highest number of votes shall be Governor; but if two or more be equal and highest in votes, then one of them shall be chosen Governor by joint ballot of both Houses of the General Assembly. Contested elections shall be determined by both Houses of the General Assembly in such manner as shall be prescribed by law.

SEC. 3. The first Governor shall hold his office until the first Monday of December, in the year of our Lord one thousand eight hundred and twenty-two, and until another Governor shall be elected and qualified to office: and forever after, the Governor shall hold his office for the term of four years, and until another Governor shall be elected and qualified; but he shall not be eligible for more than four years in any term of eight years. He shall be at least thirty years of age, and have been a citizen of the United States thirty years; two years of which next preceding his election he shall have resided within the limits of this State.

SEC. 4. He shall, from time to time, give the General Assembly information of the state of the government, and recommend to their consideration such measures as he shall deem expedient.

SEC. 5. He shall have power to grant reprieves and pardons after conviction, except in cases of impeachment.

SEC. 6. The Governor shall, at stated times, receive a salary for his services, which shall neither be increased nor diminished during the term for which he shall have been elected.

SEC. 7. He may require information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices, and shall take care that the laws be faithfully executed.

SEC. 8. When any officer, the right of whose appointment is, by this constitution, vested in the General Assembly, or in the Governor and Senate, shall, during the

recess, die, or his office by any means become vacant, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly.

SEC. 9. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to them when assembled, the purpose for which they shall have been convened.

SEC. 10. He shall be commander-in-chief of the army and navy of this State, and of the militia, except when they shall be called into the service of the United States.

SEC. 11. There shall be elected in each and every county in the said State, by those who are qualified to vote for members of the General Assembly, and at the same times and places where the election for such members shall be held, one sheriff and one coroner, whose election shall be subject to such rules and regulations as shall be prescribed by law. The said sheriffs and coroners respectively, when elected, shall continue in office two years, be subject to removal and disqualification, and such other rules and regulations as may be, from time to time prescribed by law.

SEC. 12. In case of disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the General Assembly, to such time as he thinks proper, provided it be not a period beyond the next constitutional meeting of the same.

SEC. 13. A Lieutenant Governor shall be chosen at every election for Governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for Governor and Lieutenant Governor, the electors shall distinguish whom they vote for as Governor, and whom as Lieutenant Governor.

SEC. 14. He shall by virtue of his office be speaker of the Senate, have a right, when in committee of the whole, to debate and vote on all subjects; and whenever the Senate are equally divided, to give the casting vote.

SEC. 15. Whenever the government shall be administered by the Lieutenant Governor, or he shall be unable to attend as speaker of the Senate, the Senators shall elect one of their own members as speaker for that occasion; and if, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached, removed from office, refuse to qualify, or resign, or die, or be absent from the State, the speaker of the Senate shall in like manner administer the government.

SEC. 16. The Lieutenant Governor, while he acts as speaker of the Senate, shall receive for his services, the same compensation, which shall, for the same period be allowed to the speaker of the House of Representatives and no more; and during the time he administers the government as Governor, he shall receive the same compensation which the Governor would have received had he been employed in the duties of his office.

SEC. 17. If the Lieutenant Governor shall be called upon to administer the government, and shall, while in such administration resign, die or be absent from the State during the recess of the General Assembly, it shall be the duty of the Secretary for the time being, to convene the Senate for the purpose of choosing a speaker.

SEC. 18. In case of an impeachment of the Governor, his removal from office, death, refusal to qualify, resignation or absence from the State, the Lieutenant Governor shall exercise all the power and authority appertaining to the office of Governor, until the time pointed out by this constitution for the election of Governor shall arrive, unless the General Assembly shall provide by law for the election of a Governor to fill such vacancy.

SEC. 19. The Governor, for the time being, and the Judges of the Supreme Court or a major part of them, together with the Governor, shall be and are hereby constituted a council to revise all bills about to be passed into laws by the General Assembly; and for that purpose shall assemble themselves from time to time when the General Assembly shall be convened; for which nevertheless they shall not receive any salary or consideration under any pretence whatever; and all bills

which have passed the Senate and House of Representatives shall, before they become laws, be presented to the said council for their revisal and consideration; and if, upon such revisal and consideration, it should appear improper to the said council or a majority of them, that the bill should become a law of this State, they shall return the same, together with their objections thereto in writing to the Senate or House of Representatives (in whichever of the same shall have originated) who shall enter the objections set down by the Council at large in their minutes, and proceed to re-consider the said bill. But if, after such re-consideration, the said Senate or House of Representatives shall, notwithstanding the said objections, agree to pass the same by a majority of the whole number of members elected, it shall, together with the said objections, be sent to the other branch of the General Assembly, where it shall also be reconsidered; and if approved by a majority of all the members elected, it shall become a law. If any bill shall not be returned within ten days after it shall have been presented, the same shall be a law, unless the General Assembly shall, by their adjournment, render a return of the said bill in ten days impracticable; in which case, the said bill shall be returned on the first day of the meeting of the General Assembly, after the expiration of the said ten days, or be a law.

SEC. 20. The Governor shall nominate, and by and with the advice and consent of the Senate, appoint a Secretary of State, who shall keep a fair register of the official acts of the Governor, and when required, shall lay the same and all papers, minutes and vouchers relative thereto, before either branch of the General Assembly, and shall perform such other duties as shall be assigned him by law.

SEC. 21. The State Treasurer and Public Printer or Printers for the State shall be appointed biennially by the joint vote of both branches of the General Assembly: *Provided*, That during the recess of the same, the Governor shall have power to fill such vacancies as may happen in either of said offices.

SEC. 22. The Governor shall nominate, and by and with the advice and consent of the Senate, appoint all officers whose offices are established by this constitution, or shall be established by law, and whose appointments are not herein otherwise provided for: *Provided however*, That inspectors, collectors and their deputies, surveyors of the highways, constables, jailers and such inferior officers whose jurisdiction may be confined within the limits of the county, shall be appointed in such manner as the General Assembly shall prescribe.

ARTICLE IV.

SEC. 1. The judicial power of this State shall be vested in one Supreme Court, and such inferior courts as the General Assembly shall, from time to time, ordain and establish.

SEC. 2. The Supreme Court shall be holden at the Seat of Government, and shall have an appellate jurisdiction only, except in cases relating to the revenue, in cases of mandamus, and in such cases of impeachment as may be required to be tried before it.

SEC. 3. The Supreme Court shall consist in a Chief Justice and three associates any two of whom shall form a quorum. The number of justices may, however, be increased by the General Assembly after the year one thousand eight hundred and twenty-four.

SEC. 4. The Justices of the Supreme Court and the judges of the inferior courts shall be appointed by joint ballot of both branches of the General Assembly, and commissioned by the Governor, and shall hold their offices during good behavior until the end of the first session of the General Assembly, which shall be begun and held after the first day of January, in the year of our Lord one thousand eight hundred and twenty-four, at which time their commissions shall expire: and until the expiration of which time, the said justices, respectively, shall hold circuit courts in the several counties, in such manner and at such times, and shall have and

exercise such jurisdiction as the General Assembly shall by law prescribe. But ever after the aforesaid period, the Justices of the Supreme Court shall be commissioned during good behavior, and the justices thereof shall not hold circuit courts unless required by law.

SEC. 5. The judges of the inferior courts shall hold their offices during good behavior, but for any reasonable cause, which shall not be sufficient ground for impeachment, both the judges of the supreme and inferior courts, shall be removed from office on the address of two-thirds of each branch of the General Assembly: *Provided always*, That no member of either House of the General Assembly, nor any person connected with a member by consanguinity, or affinity, shall be appointed to fill the vacancy occasioned by such removal. The said Justices of the Supreme Court, during their temporary appointments, shall receive an annual salary of one thousand dollars, payable quarter-yearly out of the public treasury. The judges of the inferior courts, and the justices of the Supreme Court who may be appointed after the end of the first session of the General Assembly, which shall be begun and held after the first day of January, in the year of our Lord one thousand eight hundred and twenty-four, shall have adequate and competent salaries, which shall not be diminished during their continuance in office.

SEC. 6. The Supreme Court, or a majority of the justices thereof, the circuit courts, or the justices thereof, shall, respectively, appoint their own clerks.

SEC. 7. All process, writs and other proceedings shall run in the name of "*The People of the State of Illinois.*" All prosecutions shall be carried on "*In the name and by the authority of the People of the State of Illinois,*" and conclude, "*against the peace and dignity of the same.*"

SEC. 8. A competent number of justices of the peace shall be appointed in each county in such manner as the General Assembly may direct, whose time of service, power, and duties shall be regulated and defined by law. And justices of the peace, when so appointed, shall be commissioned by the Governor.

ARTICLE V.

SEC. 1. The militia of the State of Illinois shall consist of all free male able-bodied persons, negroes, mulattoes and Indians excepted, resident of the State, between the ages of eighteen and forty-five years, except such persons as now are, or hereafter may be exempted by the laws of the United States or of this State, and shall be armed, equipped, and trained as the General Assembly may provide by law.

SEC. 2. No person or persons, conscientiously scrupulous of bearing arms shall be compelled to do militia duty in time of peace, provided such person or persons shall pay an equivalent for such exemption.

SEC. 3. Company, battalion and regimental officers, staff officers excepted, shall be elected by the persons composing their several companies, battalions and regiments.

SEC. 4. Brigadier and Major Generals shall be elected by the officers of their brigades and divisions respectively.

SEC. 5. All militia officers shall be commissioned by the Governor, and may hold their commissions during good behavior, or until they arrive at the age of sixty years.

SEC. 6. The militia shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at musters and elections of officers, and in going to and returning from the same.

ARTICLE VI.

SEC. 1. Neither slavery nor involuntary servitude shall hereafter be introduced into this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted; nor shall any male person, arrived at the age of twenty-one years, nor female person, arrived at the age of eighteen years, be held to serve any person as a servant, under any indenture hereafter made, unless such person shall enter into such indenture while in a state of perfect freedom, and on condition of a bona fide consideration received or to be received for their service. Nor shall any indenture of any negroe or mulatto hereafter made and executed out of this State, or if made in this State, where the term of service exceeds one year, be of the least validity, except those given in cases of apprenticeship.

SEC. 2. No person bound to labor in any other State, shall be hired to labor in this State, except within the tract reserved for the salt works near Shawneetown; nor even at that place for a longer period than one year at any one time; nor shall it be allowed there after the year one thousand eight hundred and twenty-five: any violation of this article shall effect the emancipation of such person from his obligation to service.

SEC. 3. Each and every person who has been bound to service by contract or indenture in virtue of the laws of the Illinois territory heretofore existing, and in conformity to the provisions of the same, without fraud or collusion, shall be held to a specific performance of their contracts or indentures; and such negroes and mulattoes as have been registered in conformity with the aforesaid laws, shall serve out the time appointed by said laws: *Provided however*, That the children hereafter born of such person, negroes or mulattoes, shall become free, the males at the age of twenty-one years, the females at the age of eighteen years. Each and every child born of indentured parents, shall be entered with the clerk of the county in which they reside, by their owners, within six months after the birth of said child.

ARTICLE VII.

SEC. 1. Whenever two-thirds of the General Assembly shall think it necessary to alter or amend this constitution, they shall recommend to the electors at the next election of members to the General Assembly, to vote for or against a convention; and if it shall appear that a majority of all the citizens of the State voting for representatives have voted for a convention, the General Assembly shall, at their next session, call a convention, to consist of as many members as there may be in the General Assembly; to be chosen in the same manner, at the same place and by the same electors that choose the General Assembly, and which convention shall meet within three months after the said election, for the purpose of revising, altering or amending this constitution.

ARTICLE VIII.

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE:

SEC. 1. That all men are born equally free and independent, and have certain inherent and indefeasible rights; among which are those of enjoying and defending life and liberty, and of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

SEC. 2. That all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety, and happiness.

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; that no human authority can in any case whatever

control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious establishments or modes of worship.

SEC. 4. That no religious test shall ever be required as a qualification to any office or public trust under this State.

SEC. 5. That elections shall be free and equal.

SEC. 6. That the right of the trial by jury shall remain inviolate.

SEC. 7. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable searches and seizures; and that general warrants whereby an officer may be commanded to search suspected places without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted.

SEC. 8. That no freeman shall be imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty or property, but by the judgment of his peers or the law of the land. And, all lands which have been granted as a common to the inhabitants of any town, hamlet, village or corporation, by any person, body politic or corporate, or by any government having power to make such grant, shall forever remain common to the inhabitants of such town, hamlet, village or corporation: and the said commons shall not be leased, sold or divided under any pretence whatever: *Provided, however,* That nothing in this section shall be so construed as to affect the commons of Cahokia or Prairie du Pont: *Provided, also,* That the General Assembly shall have power and authority to grant the same privileges to the inhabitants of the said villages of Cahokia and Prairie du Pont as are hereby granted to the inhabitants of other towns, hamlets and villages.

SEC. 9. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his favor. And in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage: and that he shall not be compelled to give evidence against himself.

SEC. 10. That no person shall, for any indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or the militia when in actual service, in time of war or public danger, by leave of the courts, for oppression or misdemeanor in office.

SEC. 11. No person shall, for the same offence, be twice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to public use, without the consent of his representatives in the General Assembly, nor without just compensation being made to him.

SEC. 12. Every person within this State ought to find a certain remedy in the laws, for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

SEC. 13. That all persons shall be bailable by sufficient sureties, unless for capital offences, where the proof is evident or the presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

SEC. 14. All penalties shall be proportioned to the nature of the offence, the true design of all punishment being to reform, not to exterminate mankind.

SEC. 15. No person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law, or in cases where there is strong presumption of fraud.

SEC. 16. No *ex post facto* law, nor any law impairing the validity of contracts shall ever be made; and no conviction shall work corruption of blood or forfeiture of estate.

SEC. 17. That no person shall be liable to be transported out this of State for any offence committed within the same.

SEC. 18. That a frequent recurrence of the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty.

SEC. 19. That the people have a right to assemble together in a peaceable manner to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.

SEC. 20. That the mode of levying a tax shall be by valuation, so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession.

SEC. 21. That there shall be no other banks or monied institutions in this State but those already provided by law, except a State bank and its branches, which may be established and regulated by the General Assembly of the State as they may think proper.

SEC. 22. The printing presses shall be free to every person, who undertakes to examine the proceedings of the General Assembly or of any branch of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty.

SEC. 23. In prosecutions for the publication of papers investigating the official conduct of officers, or of men acting in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels the jury shall have the right of determining both the law and the fact, under the direction of the court as in other cases.

SCHEDULE.

SEC. 1. That no inconveniences may arise from the change of a territorial to a permanent State government, it is declared by the convention, that all rights, suits, actions, prosecutions, claims and contracts, both as it respects individuals and bodies corporate, shall continue as if no change had taken place in this government in virtue of the laws now in force.

SEC. 2. All fines, penalties and forfeitures due and owing to the territory of Illinois shall enure to the use of the State. All bonds executed to the Governor, or to any other officer in his official capacity in the territory, shall pass over to the Governor or to the officers of the State, and their successors in office, for the use of the State by him or by them to be respectively assigned over to the use of those concerned, as the case may be.

SEC. 3. No sheriff or collector of public moneys, shall be eligible to any office in this State, until they have paid over according to law, all moneys which they may have collected by virtue of their respective offices.

SEC. 4. There shall be elected in each county three county commissioners for the purpose of transacting all county business, whose time of service, power and duties shall be regulated and defined by law.

SEC. 5. The Governor, Secretary, and judges, and all other officers under the territorial government shall continue in the exercise of the duties of their respective departments until the said officers are superseded under the authority of this constitution.

SEC. 6. The Governor of this State shall make use of his private seal, until a State seal shall be provided.

SEC. 7. The oaths of office herein directed to be taken, may be administered by any justice of the peace until the General Assembly shall otherwise direct.

SEC. 8. Until the first census shall be taken as directed by this constitution, the county of Madison shall be entitled to one Senator and three Representatives; the county of St. Clair, to one Senator and three Representatives; the county of Bond, to one Senator and one Representative; the county of Washington, to one Senator and one Representative; the county of Monroe, to one Senator and one Representative; the county of Randolph, to one Senator and two Representatives; the county of Jackson, to one Senator and one Representative; the counties of Johnson and Franklin, to form one Senatorial district, and to be entitled to one Senator, and each county to one Representative; the county of Union, to one Senator, and two Representatives; the county of Pope, to one Senator and two Representatives; the county of Gallatin, to one Senator and three Representatives; the county of White, to one Senator and three Representatives; the county of Edwards, to one Senator and two Representatives; and the county of Crawford, to one Senator and two Representatives.

SEC. 9. The President of the convention shall issue writs of election, directed to the several sheriffs of the several counties, or in case of the absence or disability of any sheriff, then to the deputy sheriff, and in case of the absence or disability of the deputy sheriff, then such writ to be directed to the coroner, requiring them to cause an election to be held for Governor, Lieutenant Governor, representative to the present Congress of the United States, and members to the General Assembly, and sheriffs and coroners in the respective counties; such election to commence on the third Thursday of September next, and to continue for that and the two succeeding days; and which election shall be conducted in the manner prescribed by the existing election laws of the Illinois territory; and the said Governor, Lieutenant Governor, members of the General Assembly, sheriffs and coroners, then duly elected, shall continue to exercise the duties of their respective offices for the time prescribed by this constitution, and until their successor or successors are qualified, and no longer.

SEC. 10. An auditor of public accounts, an attorney general, and such other officers for the State as may be necessary, may be appointed by the General Assembly, whose duties may be regulated by law.

SEC. 11. It shall be the duty of the General Assembly to enact such laws as may be necessary and proper to prevent the practice of duelling.

SEC. 12. All white male inhabitants above the age of twenty-one years, who shall be actual residents of this State, at the signing of this constitution, shall have a right to a vote at the election to be held on the third Thursday and the two following days of September next.

SEC. 13. The seat of government for the State shall be at Kaskaskia until the General Assembly shall otherwise provide. The General Assembly, at their first session holden under the authority of this constitution, shall petition the Congress of the United States, to grant to this State a quantity of land, to consist of not more than four, nor less than one section, or to give to this State the right of pre-emption in the purchase of the said quantity of land. The said land to be situate on the Kaskaskia river, and as near as may be, east of the third principal meridian on said river. Should the prayer of such petition be granted, the General Assembly, at their next session thereafter, shall provide for the appointment of five commissioners to make the selection of said land so granted; and shall further provide for laying out a town upon the land so selected; which town, so laid out, shall be the seat of Government of this State for the term of twenty years. Should however, the prayer of said petition not be granted, the General Assembly shall have power to make such provisions for a permanent seat of government as may be necessary, and shall fix the same where they may think best.

SEC. 14. Any person of thirty years of age who is a citizen of the United States and has resided within the limits of this State two years next preceding his election, shall be eligible to the office of Lieutenant Governor—any thing in the

thirteenth section of the third article of this constitution contained to the contrary notwithstanding.

Done in convention at Kaskaskia, the twenty-sixth day of August, in the year of our Lord, one thousand eight hundred and eighteen, and of the Independence of the United States of America, the forty-third.

IN TESTIMONY WHEREOF, we have hereunto subscribed our names.

JESSE B. THOMAS,
President of the Convention,
and representative from the county of St. Clair.

St. Clair county,

JOHN MESSINGER,
 JAMES LEMEN, JR.

Randolph county,

GEORGE FISHER,
 ELIAS KENT KANE.

Madison county,

B. STEPHENSON,
 JOSEPH BOROUGH,
 ABRAHAM PRICKETT.

Gallatin county,

MICHAEL JONES,
 LEONARD WHITE,
 ADOLPHUS FREDERICK HUBBARD.

Johnson county,

HEZEKIAH WEST,
 WILLIAM M'FATRIDGE.

Edwards county,

SETH GARD,
 LEVI COMPTON.

White county,

WILLIS HARGRAVE,
 WILLIAM M'HENRY.

Monroe county,

CALDWELL CARNS,
 ENOCH MOORE.

Pope county,

SAMUEL OMELVENY,
 HAMLET FERGUSON.

Jackson county,

CONRAD WILL,
 JAMES HALL, JR.

Crawford county,

JOSEPH KITCHELL,
 ED. N. CULLOM.

Bond county,

THOMAS KIRKPATRICK,
 SAMUEL G. MORSE.

Union county,

WILLIAM ECHOLS,
 JOHN WHITEAKER.

Washington county,

ANDREW BANKSON.

Franklin county,

ISHAM HARRISON,
 THOMAS ROBERTS.

ATTEST :

WM. C. GREENUP,
Secretary to the Convention.

RESOLUTION,

DECLARING THE ADMISSION OF THE STATE OF ILLINOIS INTO THE UNION.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That whereas, in pursuance of an act of Congress, passed on the eighteenth day of April, one thousand eight hundred and eighteen, entitled "An act to enable the people of the Illinois Territory to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States," the people of said Territory did, on the twenty-sixth day of August, in the present year, by a convention called for that purpose, form for themselves a constitution and State government, which constitution and State government, so formed, is republican, and in conformity to the principles of the articles of compact between the original States and the people and States in the territory north-west of the river Ohio, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven: *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the State of Illinois shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States, in all respects whatever.

APPROVED: December 3, 1818.

REVISED STATUTES.

AN ACT

For revising and consolidating the general statutes of the State of Illinois.

WHEREAS, it is expedient that the general statutes of this State should be consolidated, and arranged in appropriate chapters and sections; that omissions should be supplied, and defects amended; and that the whole should be rendered plain, concise and intelligible: Therefore,

Be it enacted by the People of the State of Illinois, represented in the General Assembly, in manner following, that is to say:

CHAPTER I.

ABATEMENT.

SECTION

1. Pleas in abatement to be sworn to.
2. Full costs on overruling plea in.
3. Non-joinder of one of a company, &c., not to abate suit; but defendant brought in by summons.
4. What proceedings, when defendant not found; no other plea in abatement allowed.
5. Marriage of *feme sole* plaintiff; not to abate suit, but husband made a party.
6. Marriage of *feme sole* defendant.
7. Death of sole plaintiff, not to abate action; when and how to proceed.
8. Death of sole defendant; how to proceed in case of.
9. Death of co-plaintiff or co-defendant, not to abate action; how to proceed in case of.

SECTION

10. When plaintiff or defendant, who is executor or administrator, shall die, how to proceed.
11. When plaintiff, being a public officer or trustee, shall die, &c., how to proceed.
12. Proceedings for partition of lands not to abate by death of parties—proceedings in such cases.
13. Suit in the name of one, for another's use, not to abate by death, &c.; proceedings in such cases.
14. The provisions of this chapter to extend to proceedings in equity, to appeals, &c.
15. Orders of court to bring in or substitute parties, how to be made; and writs of *scire facias*, how issued; within what time such writs shall be sued out.

SECTION 1. No plea in abatement, other than a plea to the jurisdiction of the court, or when the matters relied upon to establish the truth of such plea appear of record, shall be admitted or received, by any court of this State, unless the party offering the same, or some other person for him, file an affidavit of the truth thereof.

SEC. 2. When a plea in abatement shall be adjudged insufficient, by the court, the plaintiff shall recover full costs, to the time of overruling such plea.

SEC. 3. When one or more of the persons composing any company or association of individuals, shall be sued, and the person or persons so sued, shall plead in abatement, that all the persons who should have been made defendants, are not joined in the suit, such suit shall not for that cause, abate, if the plaintiff or plaintiffs forthwith sue out a *scire facias* against the persons named in such plea; and

on the return of such *scire facias*, the names of the persons named in such plea may be inserted in the declaration, and the suit shall proceed in all respects thereafter, as if the persons named in such plea, had been named in the original suit.

SEC. 4. If the persons named in such plea cannot be served with process, the plaintiff or plaintiffs, on the return of such summons, may suggest on the record the names of those not served, and proceed as in other cases in which service is made on part of the defendants only: and no other plea in abatement for non-joinder of defendants, shall be allowed in the same case.

SEC. 5. No action or complaint, in law or equity, commenced by a *feme sole*, shall abate on account of her intermarriage before final judgment: *Provided*, The husband shall appear and cause such marriage to be suggested on the record, and himself made a party in the suit; after which the suit may proceed in the same manner as if commenced after such marriage.

SEC. 6. If a *feme sole* defendant intermarry before final judgment or decree, the action shall not thereby abate, but the husband, on his own application, or on that of the plaintiff, and due notice thereof given, may, by order of the court be made a party to the suit; and the suit shall then proceed as in other cases.

SEC. 7. When there is but one plaintiff in an action, and he shall die before final judgment, such action shall not thereby abate, if the cause of action survive to the heirs, devisees, executors or administrators of such plaintiff, but any of such, to whom the cause of action shall survive, may, by suggesting such death on the record, be substituted as plaintiff or plaintiffs therein, and prosecute the same as in other cases.

SEC. 8. When there is but one defendant in an action, and he shall die before final judgment, such action shall not thereby abate, if it might be originally prosecuted against the heirs, devisees, executors or administrators of such defendant; but the plaintiff may suggest such death on the record, and shall, by order of the court, have summons against such person or persons, requiring him or them to appear and defend the action, after which such suit shall proceed to final judgment according to law.

SEC. 9. If there are two or more plaintiffs in any action, and one or more of them die before final judgment, the action shall not thereby abate, if the cause of action survive to the surviving plaintiff or plaintiffs; and if there are two or more defendants in any action, and one or more of them shall die before final judgment, such action shall not be abated thereby; but in either of said cases, such death or deaths shall be suggested on the record, and the action may proceed at the suit of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, as the case may require, in all respects as if such persons had been originally, sole parties to the suit.

SEC. 10. When any executor or administrator shall be plaintiff or defendant in any suit, and shall, before final judgment, die, or cease to be such executor or administrator, the suit shall not thereby abate; but the same may be continued by, or against, the successor of such executor or administrator, by an order of court substituting such successor as defendant therein.

SEC. 11. When an action is authorized or directed by law, to be brought by or in the name of any public officer, or by any trustee appointed by virtue of any statute, and such officer or trustee shall, before final judgment, die, or cease to be such officer or trustee, the suit shall not thereby abate, if the cause of such suit survive to his successor; but the same may be continued by such successor, who

shall be substituted for that purpose by order of the court, on a suggestion of such death being made upon the record.

SEC. 12. Proceedings for the partition of lands shall not abate by the death of any party thereto, but shall continue in the names of the survivors, if the interest of such deceased person in the lands shall survive to them; and if such interest shall pass to other persons, they may, by rule of court, be made parties, and the same proceedings shall be had as though they had been made parties originally.

SEC. 13. No suit instituted in the name of one for the use of another shall abate by reason of the death of the person whose name is used; but may be continued by the real plaintiff in interest in his own name on his suggesting such death on the record and an order of the court being made, substituting his name for that of the deceased plaintiff.

SEC. 14. The provisions of this chapter shall extend as well to proceedings in equity as at law, and the provisions of sections five, six, seven, eight, nine, ten, eleven, twelve and thirteen, shall be applicable to all appeals, writs of error, and of *certiorari*.

SEC. 15. All orders authorized by this chapter to be made, for the purpose of introducing into a suit a new person as a co-defendant with the original party, or for the purpose of substituting a person as defendant in place of the original party, shall be made either upon the voluntary appearance of such person, or by order of the court, after the party to be made such defendant, shall have been served with a *scire facias*; and all such writs of *scire facias* may be sued out either in term time or in vacation, and may be directed to any county, and shall correspond, as nearly as practicable, to the original writ, and may be executed and returned in the same manner; but no *scire facias* for the purpose of substituting another person in place of the original defendant, shall be sued out after the second day of the second term of the court, next after the term at which the death or disability of the original party shall be suggested on the record.

APPROVED: March 3, 1845.

CHAPTER II.

ACCOUNT.

SECTION

1. What persons shall account, and to whom.
2. Who may maintain action of, and against whom.
3. Executor being a residuary legatee, may maintain action of, and against whom.
4. When by and against executors and administrators.
5. Process in, service and return of.
6. Defendant summoned and not appearing, may be attached.

SECTION

7. Auditors to be appointed.
8. Powers and duties of auditors if defendant fail to appear.
9. Powers and duties of auditors, if defendant appear.
10. Auditors to report, and action of the court.
11. Parties may appeal.
12. Chancery jurisdiction saved.

SECTION 1. When one or more joint tenants, tenants in common, or co-parceners in real estate, or any interest therein, shall take and use the profits or benefits thereof, in greater proportion than his, her or their interest, such person or persons, his, her or their executors and administrators, shall account therefor to his or their co-tenant jointly or severally.

SEC. 2. Joint tenants, tenants in common, and co-parceners in any estate real or personal, may maintain actions of account against their co-tenants, who receive as bailiffs more than their due proportion of the profits and benefits of such estate.

SEC. 3. Any executor, being a residuary legatee, may bring and maintain an action of account against his co-executor; and any other residuary legatee shall have the same remedy against executors and administrators.

SEC. 4. Actions of account may be maintained by and against executors and administrators in all cases in which the same might have been maintained by and against their testator or intestate.

SEC. 5. The original process in actions of account, shall be the same as is provided by law for other personal actions, and shall be served and returned in the same manner.

SEC. 6. When any person is or shall be liable to account, as guardian, bailiff or receiver, or otherwise, to another, and will not give an account willingly, the party to whom such an account ought to be made, may bring his action of account, and if the person, against whom such action may be brought, being summoned, does not appear at the return of the writ, then the defendant shall be attached by his body to appear and render his account.

SEC. 7. Whenever a judgment shall be rendered against any defendant, that he account, the court shall appoint not more than five, nor less than three able, disinterested and judicious men as auditors, to take the account, who shall, before they enter on their duties, be sworn faithfully and impartially to take and state the account between the parties, and make report to the court.

SEC. 8. Such auditors, or a majority of them, shall have power to appoint the time and place for the hearing, and shall give reasonable notice to the parties; and if the defendant shall neglect or refuse to attend at the time and place appointed and render his account, or appearing shall not render an account, the auditors shall receive a statement of the account from the plaintiff, and award to him the whole sum he claims to be due.

SEC. 9. If the parties appear, and produce their books and accounts before the said auditors, such auditors, or a majority of them, shall proceed to take and state the accounts, and may take the testimony of witnesses, and examine either or both of the parties on oath, respecting their accounts; and may administer all necessary oaths to witnesses and parties. If either party shall refuse to be sworn, or answer proper questions respecting his account, the auditors, or a majority of them, may commit him to jail, there to remain until he consent to be sworn, or answer the interrogatories.

SEC. 10. The auditors, or a majority of them, shall liquidate and adjust the accounts, and state the balance, and to whom due. They, or a majority of those present, shall report to the court by whom they were appointed, at the next term thereof; and if such report shall be approved by the court, the court shall render judgment for the amount ascertained to be due, with costs; and the party in whose favor the report is made, shall pay the auditors their fees, which shall be taxed as costs.

SEC. 11. Either party may appeal or prosecute a writ of error, from the final judgment upon the report of the auditors, in the same manner, and upon the same conditions, as provided by law in other cases.

SEC. 12. Nothing in this chapter contained, shall be so construed as to deprive courts of chancery of their jurisdiction in matters of account.

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CHAPTER III.

ADVERTISEMENTS.

SECTION

1. Publication of, how proved.
2. By whom paid for, and how allowed by court.
3. By public officers, how allowed and paid for.

SECTION

4. How often published, when number of insertions are not specified.

SECTION 1. When any notice or advertisement shall be required by law, or the order of any court, to be published in any newspaper, the certificate of the printer or publisher, with a written or printed copy of such notice or advertisement annexed, stating the number of times which the same shall have been published, and the dates of the first and last papers containing the same, shall be sufficient evidence of the publication therein set forth.

SEC. 2. When any notice or advertisement relating to any cause, matter or thing depending in any court of record, shall have been duly published, the same may be paid for by the party at whose instance the same was published, who may present his account therefor to the proper court, which account, or so much thereof as shall be deemed reasonable, may be taxed as costs, or otherwise allowed in the course of the proceedings to which such notice or advertisement shall relate.

SEC. 3. When any notice or advertisement shall be published by a public officer, in pursuance of law, the reasonable expense thereof shall be allowed and paid out of the State or county treasury, as the case may require.

SEC. 4. In all cases, in which by law, or order of court, any advertisement shall be directed to be published, and the number of publications shall not be specified, it shall be taken and intended, that such advertisement shall be published three times for three successive weeks.

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CHAPTER IV.

ALIENS.

SECTION

1. Rights of aliens to acquire, hold and transmit real estate.

SECTION

2. Personal estate of aliens may pass to heirs though aliens.

SEC. 1. All aliens, residing in this State, may take, by deed, will or otherwise, lands and tenements and any interest therein, and alienate, sell, assign and transmit the same, to their heirs, or any other persons, whether such heirs or

other persons be citizens of the United States or not, in the same manner as natural born citizens of the United States or of this State might do; and upon the decease of any alien having title to, or interest in, any lands or tenements, such lands and tenements shall pass and descend in the same maner as if such alien were a citizen of the United States, and it shall be no objection to any persons having an interest in such estate that they are not citizens of the United States; but all such persons shall have the same rights and remedies, and in all things be placed on the same footing as natural born citizens and actual residents of the United States.

SEC. 2. The personal estate of an alien dying intestate, who at the time of his death shall reside in this State, shall be distributed in the same manner as the estates of natural born citizens, and all persons interested in such estate, shall be entitled to their proper distributive shares thereof, under the laws of this State, whether they are aliens or not.

APPROVED: March 3, 1845.

CHAPTER V. AMENDMENTS AND JEOFAILS.

SECTION

1. Misprison of clerk not to vitiate process or record; amendment after judgment.
2. General power of court to amend pleadings.
3. Courts may correct misprisons of sheriffs and others.
4. Judgments not to be reversed for erasures and interlinations.
5. New entries, &c.
6. Effect of errors after judgment.
7. Judgment not to be reversed for want of form.
8. Judgment not to be reversed for variance or lack of certain averments.
9. Judgment not to be reversed for want of certain allegations.

SECTION

10. How far court to proceed on demurrer; certain defects not cause of demurrer, except when specially set forth.
11. Extent of provisions of this chapter; in cases when defect is cured by verdict.
12. Shall extend to debts due the State; to cases for recovery of revenue; to writs of mandamus, informations in nature of *quo warranto*.
13. To writs of error in which there is variance, may be amended.
14. This chapter not to extend to indictments, informations, nor to proceedings upon penal statutes.

SECTION 1. By the misprison of any clerk in any place wheresoever it be, no record or process shall be annulled or discontinued, by mistaking in writing, one syllable or one letter too much or too little; but as soon as the thing is perceived, by challenge of the party, or in other manner, it shall be immediately amended in due form, without giving advantage to the party that challenges the same, because of such misprison; and the court before whom such plea or record is made, or shall be depending, as well by adjournment, as by way of appeal, or error, or otherwise, shall have power and authority, to amend such record and process as aforesaid, as well after judgment, in any suit, plea, record or process given, as before judgment, as long as the same record and process is before them.

SEC. 2. The court in which any record, process, declaration, count, plea, warrant of attorney, writ, pannel or return is or may be, while the same remains before them, shall have power to examine such records, processes, declarations, counts, pleas, warrants of attorney, writs, pannels and returns, by them and their clerks,

and amend (in affirmance of judgments of such records and processes) all that which, to them in their discretion, seemeth to be misprison of the clerks, therein; so that by such misprison of the clerks, no judgment shall be reversed or annulled. And if any record, process, declaration, count, plea, warrant of attorney, writ, pannel or return be certified defective, otherwise than according to the writing which thereof remaineth in the offices, courts or places from whence they are certified, the parties, in affirmance of the judgments of such records and processes, shall have advantage to allege that the same writing is variant from the said certificates: and that being found and certified, the same variance shall be, by the said court, reformed and amended according to the first writing.

SEC. 3. The courts before whom any misprison or default is, or shall be found, in any record or process, which is, or hereafter shall be depending before them, as well by way of appeal or error, as otherwise, or in the returns, (the same made or to be made by sheriffs, coroners, or any other,) by misprison of the clerk of any of the said courts, or by misprison of the sheriffs, under-sheriffs or deputies, coroners or their clerks, or other officers, clerks, or other ministers whatsoever, shall have power to amend such defaults or misprisons according to their discretion, and, by examination thereof by the said courts, to be taken when they shall think needful; and all such amendments may be made as well after a judgment given upon verdict, confession, *nihil dicit*, or *non sum informatus*, as upon matter of law pleaded.

SEC. 4. For errors assigned, or to be assigned, in any record, process, warrant of attorney, writ, original or judicial, pannel or return, or that in any places of the same there be erasures or interlineations, or that there be any addition, subtraction or diminution of words, letters or titles, or parcels of letters, found in any such record, process, warrant of attorney, writ, pannel or return, no judgment, or record, or decree, shall be reversed or annulled.

SEC. 5. Record and process, real, or personal, or mixed, whereof judgment or decree shall be given and enrolled, or things touching such pleas, shall in nowise be amended or impaired by new entering of the clerks, either by the record of things certified, in no term subsequent to that in which such judgment or decree is or shall be given and enrolled.

SEC. 6. If any issue hath been, or shall be tried by any court or jury, and be found for either party, in any court of record, then the court by whom judgment ought to be given, shall proceed and give judgment in the same, any mispleading, lack of color, insufficient pleading, or jeofail, or any miscontinuance, discontinuance, misconceiving of process, misjoining of the issue, lack of warrant of attorney, or any other default or negligence of any of the parties, their counsellors or attorneys to the contrary notwithstanding; and the said judgments thereof, so to be had and given, shall stand in full strength and force, to all intents and purposes, according to the said verdict or finding, without any undoing the same by appeal, writ of error or false judgment, in like form as though no such default or negligence had ever been had or committed.

SEC. 7. If a verdict of a court or jury shall hereafter be given, for either party in any court of record, the judgment thereupon shall not be stayed or reversed by any default of form, or lack of form in any writ, original or judicial, count, declaration, plaint, bill, suit or demand, for want of any writ, or by reason of any imperfect or insufficient return of any sheriff or other officer, or for want of any warrant of attorney, or by reason of any manner of default in process, upon, or after any aid-

prayer or voucher; nor shall any such record or judgment after verdict, to be given hereafter, be reversed for any of the defects or causes aforesaid.

SEC. 8. If any verdict be rendered by the court or jury, for either party, in any court of record, the judgment thereupon shall not be stayed or reversed by reason of any variance in form only, between the original writ or process, and the declaration, petition, plaint or demand, or for lack of an averment of any life or lives of any person or persons, so as upon examination, the said person be found to be in life, or by reason that any of the persons in whose favor the verdict is rendered is an infant and appeared by attorney.

SEC. 9. If any verdict shall hereafter be given by a court or jury for either party, in any court of record, judgment thereon shall not be stayed or reversed for any default in form, or lack of form, or by reason that there are not pledges or but one pledge to prosecute, returned upon the original writ, or because the name of the sheriff is not returned upon the original writ or process, or for default of entering pledges upon any petition, or declaration, or for default of alleging the bringing into court, any bond, bill, indenture, or other deed or writing mentioned in the declaration or other pleading, for default of allegation of bringing into court letters testamentary or of administration, or by reason of the omission of the words "*with force and arms,*" or "*against the peace,*" or for, or by reason of mistaking the christian or surname of the plaintiff or defendant, demandant or tenant, sum or sums of money, day, month, or year, by the clerk, in any bill, petition, declaration or pleading, where the right name, surname, sum, day, month or year, in any writ, record or proceeding, or on the same record where the mistake is committed, is, or are once truly and rightly alleged, whereunto the party might have demurred and shown the same for cause, nor for want of the averment or words "*and this he is ready to verify,*" or "*and this he is ready to verify by the record,*" or for not alleging, "*as appears by the record,*" or that there was no right venue, so as the cause was tried by a jury of the proper county, or place where the action is laid, nor shall any judgment after verdict be reversed, for want of entering that the person against whom such judgment is given, "*be in mercy,*" or "*be taken,*" or by reason that the words "*be taken,*" are entered for "*be in mercy,*" or that the words "*be in mercy,*" for "*be taken,*" nor for that in the judgment "*it is granted*" are entered for "*it is considered,*" nor for that the increase of costs, after the verdict in any action, are not entered at the request of the party for whom judgment is given, nor by reason that the costs on any judgment are not entered to be by consent of the plaintiff; but all such omissions, variance, defects and all other matters of the like nature, not being against the right of the matters of the suit, nor whereby the issue or trial is altered, shall be amended by the courts, where such judgments are or shall be given, or whereunto the record is or shall be removed by appeal or writ of error.

SEC. 10. When any demurrer shall be joined, and entered in any action or suit, in any court of record, the judges shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission or defect for want of form in any writ, return, plaint, declaration or other pleading, process or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as cause of the same, notwithstanding that such imperfection, omission or defect might heretofore have been taken to be matter of substance, so as sufficient matter appear on the said pleadings upon which the court may give judgment according to the very right of the cause; and therefore no advantage or exception shall be taken of or for an immaterial traverse, of or for default

of entering pledge upon any petition or declaration, or for the default of alleging the bringing into court any bond, bill, indenture or writing mentioned in the declaration or other pleadings, or of, or for the default of alleging the bringing into court of letters testamentary or of administration, or of, or for the omission of the words "*with force and arms,*" and "*against the peace,*" or either of them, or of, or for want of the averment or words, "*and this he is ready to verify,*" or, "*and this he is ready to verify by the record,*" or of, or for not alleging "*as appears by the record,*" but the court shall give judgment according to the very right of the cause as aforesaid, without regarding any such imperfection, omissions and defects, or other matter of like nature, except the same shall be specially and particularly set down and shown for cause of demurrer: and no judgment shall be reversed for any such imperfection, omission, defect or want of form, except such only as are before excepted. And after demurrer joined, the court before whom the same shall be pending may, from time to time, amend all and every such imperfection, omission, defect and want of form as are before mentioned, other than those only which the party demurring shall specially and particularly set down, together with his demurrer as aforesaid.

SEC. 11. Every thing herein before contained shall extend to all judgments which shall be entered upon confession, "*nil dicit,*" or, "*non sum informatus,*" in any court of record; and no such judgment shall be reversed; nor any judgment upon any writ of enquiry of damages executed thereon shall be stayed or reversed for, or by reason of any imperfection, omission, defect, matter or thing which would have been aided and cured by this chapter in case a verdict had been given in such action or suit, so there be an original writ, duly issued according to law.

SEC. 12. This chapter shall extend to all suits in any court of record for the recovery of any debt due the State, or any duty or revenue thereto belonging, and also to all writs of mandamus and informations of the nature of *quo warranto* and proceedings thereon.

SEC. 13. All writs of error, wherein there shall be any variance from the original record, or any other defect, may and shall be amended, and made agreeable to such record by the respective courts where such writs of error are or shall be made returnable.

SEC. 14. No part of this chapter shall extend to any indictment or presentment for any criminal matter or process upon the same; nor to any writ, action, or information upon any popular or penal statute; nor to any outlaw, or process thereupon in order thereunto.

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CHAPTER VI.

APPRENTICES.

SECTION	SECTION
1. Minors may be bound; at what age.	5. Executor may bind in certain cases.
2. Who may bind them; father or mother if father be incapacitated.	6. When minor shall beg, or become a public charge, who may bind.
3. If mother be dead or incompetent, guardian may bind.	7. Compulsory process in certain cases.
4. If there be no guardian, probate justice may bind, or two justices of the peace, with minor's consent.	8. Mayor or aldermen may bind in certain cases.
	9. Indentures to be of two parts; to be signed and sealed.

SECTION

10. Age and term of service to be inserted in indenture.
11. Apprentice to be taught reading, writing, arithmetic; to have bible, wearing apparel. Exception as to negroes, &c.
12. Amount of compensation to be inserted, and held for use of apprentice.
13. Copy of indentures to be filed in certain cases with probate justice. Duty of probate justice.
14. What indentures are void.
15. Remedy and mode of redress in case of improper treatment of apprentice.

SECTION

16. Proceedings in case of misconduct of apprentice. Appeals in such cases.
17. Penalty for enticing away apprentices.
18. Penalty for concealing apprentices.
19. Apprentices not to be removed out of this State.
20. Duty of master on removing or quitting business.
21. Proceedings in case of death of master, &c.
22. Apprentices leaving service, how liable.

SECTION 1. All children under the age of fourteen years may be bound by indenture or covenant of service, clerks, apprentices or servants, until they arrive at that age, with or without their consent; and all minors above that age, may be so bound, with their consent; males, until they arrive at the age of twenty-one, and females, until they arrive at the age of eighteen years, or for a shorter term as herein provided.

SEC. 2. Any such minor may be bound, by and with the consent of, his or her FATHER. If the father be dead, or if he shall have wilfully abandoned and neglected to provide for his family for the space of six months; or shall have become an habitual drunkard; or from any other cause shall not have legal capacity to consent, then the MOTHER shall have the same power to give such consent as if the father were dead. The fact of such desertion, drunkenness or legal incapacity, shall be tried and found in the court of probate by a jury empannelled for that purpose; and an endorsement on such indenture, under the seal of the court, certifying the facts found by such jury, together with the approval of the court of the terms of such indenture, shall be deemed sufficient evidence of the power of the mother to give such consent as aforesaid. And in all cases of illegitimate children, the mother shall be deemed the proper person to give the consent herein required.

SEC. 3. If the mother be dead, or shall have abandoned and neglected to provide for her family for the space of six months, or shall have become an habitual drunkard, or a prostitute, or shall not, from any other cause, have legal capacity to consent; which fact shall be ascertained and certified as provided in the foregoing section; then the GUARDIAN of such minor, duly appointed, shall have power to give such consent. If there be no guardian, such minor may be bound as hereinafter provided.

SEC. 4. Any minor who shall have no parent or guardian living in this State, may, by and with the approbation of the judge of probate, or of any two justices of the peace of the county in which such minor shall reside, bind himself or herself as aforesaid, which approbation shall be endorsed on the said indenture.

SEC. 5. The executor or executors who are, or shall be, by the last will and testament of a father, directed to bring up his child or children to some trade or calling, shall have power to bind such child or children by indenture, in like manner as the father, if living, might have done; or shall raise such child or children according to such directions.

SEC. 6. Whenever any minor shall habitually beg for alms, or shall become chargeable to the county, or shall be likely to become so, by reason of being an orphan without means of support, or by reason of the inability, refusal or neglect of the parent or parents of such minor to support him or her, such minor may be bound as aforesaid by the county commissioners' court, or by any two overseers of the poor, or by any two justices of the peace of the county in which such minor may

reside, by the approval and consent of the judge of probate; and such indenture shall be as valid and binding as though such minor had bound himself or herself with the consent of his or her father; but this section shall not apply to females over the age of fifteen years.

SEC. 7. The persons authorized in the foregoing section to bind the minors therein specified, may, respectively, as the case may require, issue their order, directing the sheriff or any constable of their county, to bring such minors before them.

SEC. 8. The mayor, or any two aldermen of any city or incorporated town, which, by its charter, is charged with the custody and maintenance of the poor within its limits, may bind minors as provided in the two foregoing sections.

SEC. 9. The indenture or covenant of service, shall be of two parts, and in all cases shall be signed and sealed by all the parties whose consent is herein made necessary thereto: *Provided*, That in cases requiring the consent and approval of the judge of probate, such consent and approval shall be endorsed on said indenture, attested by his seal of office.

SEC. 10. The age and time of service of every apprentice or servant, shall be inserted in his or her indentures; but if such age shall be unknown, then it shall be inserted according to the best information, which age shall, in relation to the term of service, be deemed and taken as the true age of such minor.

SEC. 11. In all indentures it shall be provided that the master or mistress shall cause such clerk, apprentice or servant, to be taught to read and write, and the ground rules of arithmetic; and shall also, at the expiration of such term of service, give to such apprentice a new bible, and two complete suits of new wearing apparel, suitable to his or her condition in life: *Provided*, That if such minor be a negro or mullatto, it shall not be necessary to require that he or she shall be taught to write, or the knowledge of arithmetic.

SEC. 12. Every sum of money paid or agreed for, with, or in relation to the binding of any clerk, apprentice or servant, as a compensation for his or her services, shall be inserted in the indentures; and all money or property so paid or agreed to be paid, shall be secured to, and for the sole use and benefit of the minor.

SEC. 13. Whenever any minor shall be bound by other than his or her parent or guardian, one copy of the indentures shall be filed in the office of the judge of probate for safe keeping; and it shall be the duty of the officers or persons binding such minors, and of the judge of probate to see that the terms of such indentures are complied with, and that such minor is not ill used.

SEC. 14. All indentures, covenants, promises and bargains, for taking, binding or keeping any apprentice, clerk or servant, not in conformity with the provisions and requirements of this chapter shall be utterly void in law, as against such clerk, apprentice or servant.

SEC. 15. The judge of probate, or any two justices of the peace, excepting the justices who may have bound the apprentice complaining, shall at all times receive the complaints of clerks, apprentices and servants, who reside within the jurisdiction of such judge or justices, against their masters or mistresses, alleging undeserved or immoderate correction, unwholesome food, insufficient allowance of food, raiment or lodging, want of sufficient care or physic in sickness, want of instruction in their trade or profession, or the violation of any of the agreements or covenants in the indentures of apprenticeship contained, or that he or she is in danger of being removed out of the jurisdiction of this State; and shall cause such masters or mistresses to be summoned before them, and shall on the return of the summons,

whether such master or mistress appear or not, hear and determine such cases, in a summary way, and make such order thereon, as in the judgment of the said judge of probate, or two justices of the peace, will relieve the party injured in future; and shall have authority, if said judge or two justices think proper, to discharge such clerk, apprentice or servant from his or her apprenticeship or service. And in case any money or other thing, shall have been paid, given, or contracted or agreed for by either party in relation to the said apprenticeship or service, shall make such order concerning the same, as the said judge or justices of the peace shall deem just and reasonable. And if the said apprentice so discharged shall have been bound originally, as provided in the sixth, seventh and eighth sections of this chapter, it shall be the duty of the court granting the discharge, again to bind him or her, if said court shall judge proper.

SEC. 16. The said judge of probate or any two justices of the peace shall, on the complaint of masters or mistresses, issue a warrant against any clerk, apprentice or servant for desertion, without good cause, or for any misdemeanor, miscarriage or ill behavior, and may punish such clerk, apprentice or servant according to the nature and aggravation of his or her offence, by imprisonment not exceeding ten days; and in addition to the above punishment, where the offence shall be desertion without good cause, the court may order the said clerk, apprentice or servant guilty thereof, to make restitution by the payment of a sum not exceeding eight dollars for each and every month he or she may be so absent, to be collected as other debts, after such clerk, servant or apprentice shall become of full age. The awarding of costs on proceedings under this and the preceding sections, shall be in the discretion of the court. An appeal to the circuit court from any decisions made under this or the preceding sections shall be allowed to either party, upon the party appealing, entering into a bond, with good and sufficient security, in the penalty of one hundred dollars, conditioned to prosecute such appeal to effect, and to abide by and perform the decision of the circuit court in the premises: which court shall hear and decide such appeal upon the same principles as the said judge of probate or justices ought to have heard and decided the original complaint. The decision of the circuit court shall be final and conclusive in the premises, and shall not be subject to appeal or writ of error. The bond above mentioned, shall be entered into before the clerk of the circuit court, who shall thereupon proceed in said appeal as is directed by law, in cases of appeal from the decisions of justices of the peace in other cases.

SEC. 17. Every person who shall counsel, persuade, entice, aid or assist any clerk, apprentice or servant, to run away or absent himself or herself from the service of his or her master or mistress, or to rebel against, or assault his or her master or mistress, shall forfeit and pay a sum not less than twenty, nor more than five hundred dollars, to be sued for and recovered by action on the case, with costs, by such master or mistress, in any court having jurisdiction thereof.

SEC. 18. Every person who shall conceal any clerk, apprentice or servant, knowing such clerk, apprentice or servant to have run away, or to have absented himself or herself from the service of his or her master or mistress without leave, shall forfeit and pay one dollar for every day's concealing as aforesaid; to be sued for and recovered by action of debt with costs, by such master or mistress, in any court having jurisdiction thereof.

SEC. 19. It shall not be lawful for any master or mistress, to remove any clerk, apprentice or servant bound to him or her as aforesaid out of this State; and if at

any time it shall appear to any judge, or justice of the peace, upon the oath of any competent person, that any master or mistress is about to remove, or cause to be removed, any such clerk, apprentice or servant out of this State, it shall be lawful for such judge or justice, to issue his warrant, and to cause such master or mistress to be brought before him, and if upon examination, it appear that such apprentice, clerk or servant is in danger of being removed without the jurisdiction of this State, the judge or justice may require the master or mistress to enter into recognizance, with sufficient security, in the sum of one thousand dollars, conditioned that such apprentice, clerk or servant, shall not be removed without the jurisdiction of this State, and that the said master or mistress will appear with the apprentice, clerk or servant before the circuit court, at the next term thereof, and abide the decision of the court therein; which recognizance shall be returned to the circuit court, and the said court shall proceed therein, in a summary manner, and may discharge or continue the recognizance, or may require a new recognizance, and otherwise proceed according to law and justice. But if the master or mistress, when brought before any judge or justice, according to the provisions of this section, will not enter into a recognizance as aforesaid, if required so to do, it shall be lawful for such court or justice to discharge such clerk, apprentice or servant from such apprenticeship or service, and to award judgment against such master or mistress for costs, and for such sum as, considering the terms of the indentures and the condition of the parties, may be deemed just and reasonable.

SEC. 20. Whenever any master or mistress of any clerk, apprentice or servant, bound by the court as aforesaid, shall wish to remove out of this State, or to quit his or her trade or business, it shall and may be lawful for him or her, to appear with his or her clerk, apprentice or servant before the probate court of the proper county; and such court shall have power if deemed expedient, to discharge such clerk, apprentice or servant from the service of such master or mistress.

SEC. 21. When any person shall become bound as clerk, apprentice or servant, according to the provisions of this chapter, to two or more persons, and one or more of them die before the expiration of the term of service, the indentures and contracts shall survive to, and against such survivor or survivors; and in case of the death of all the masters or mistresses in any such indenture or contract named, before the expiration of the term of service, such clerk, apprentice or servant shall be thereby discharged from such service.

SEC. 22. Any clerk, apprentice or servant, bound according to the provisions of this chapter, who shall absent himself or herself from the service of his or her master or mistress, without leave first obtained, or who shall run away, so that the master or mistress shall be deprived of his or her service, during the remainder of the term, or any part thereof, for which he or she was bound to serve, then and in that case, it shall and may be lawful for the master or mistress of such clerk, apprentice or servant, to have an action on the case, in any court of competent jurisdiction, against such clerk, apprentice or servant, after he or she arrives at full age, for the damage that such master or mistress may have sustained, by reason of the absence of such clerk, apprentice or servant: *Provided*, That such action shall be brought within six years, after such clerk, apprentice or servant, shall arrive at full age.

APPROVED: March 3, 1845.

CHAPTER VII.

ARBITRATIONS AND AWARDS.

SECTION

1. Persons competent, may arbitrate matters not in suit; judgment of proper court may be rendered on the award.
2. When parties to suits agree to arbitrate, order of court may be entered; arbitrators, how selected.
3. Duty of arbitrators; to appoint time and place of meeting; may adjourn for good cause.
4. Arbitrators shall be sworn; by whom oath may be administered.
5. Who may issue subpoenas; attendance of witnesses compelled. Arbitrators may administer oaths, punish contempts, admit depositions to be read.
6. Award shall be in writing; shall be signed and copies delivered to parties.
7. Either party not complying, right of the other to file papers in court.

SECTION

8. Aggrieved party may have judgment at next term, for amount of award and costs.
9. Proceedings when award is other than for the payment of money.
10. In what cases court may set aside the award.
11. Court may modify or correct award in case of mistake, etc.
12. Applications to set aside or correct awards; when to be made; chancery jurisdiction reserved.
13. Writs of error and appeals allowed.
14. Fees of arbitrators; witnesses and officers.
15. Arbitrators may be compelled to report.
16. When matter in suit is referred, cause continued.

SECTION 1. All persons having the requisite legal capacity, may, by an instrument in writing, to be signed and sealed by them, and attested by at least one witness, submit to one or more arbitrators, any controversy existing between them, not in suit; and may in such submission agree that a judgment of any court of record competent to have jurisdiction of the subject matter, to be named in such instrument, shall be rendered upon the award made pursuant to such submission.

SEC. 2. Whenever the parties to any suit pending in any court of record, shall be desirous and willing to submit the matters involved in such suit to the decision of arbitrators, an order shall be entered directing such submission to three impartial and competent persons, to be named in such order; such arbitrators to be agreed upon and named by the parties. But if the parties are unable to agree, each shall name one, and the court the third.

SEC. 3. The arbitrators appointed in pursuance of the foregoing provisions, or a majority of them, shall proceed with diligence to hear and determine the matters in controversy. They shall appoint a place and time for hearing, and adjourn the same from time to time, as may be necessary. And on the application of either party, and for good cause, they may postpone such hearing from time to time, not extending beyond the next term of the court in which the said suit is pending, if the subject matter be in suit.

SEC. 4. Before proceeding to hear any testimony in the cause, the arbitrators shall be sworn, faithfully and fairly to hear, examine and determine the cause, according to the principles of equity and justice; and to make a just and true award according to the best of their understanding, which oath may be administered by any justice of the peace, or clerk of the circuit court, in which the suit is pending.

SEC. 5. The several clerks of the circuit courts, and the justices of the peace in their several counties, may issue subpoenas for the attendance of witnesses before arbitrators: If any witness, after being duly summoned, shall fail to attend, the arbitrators may issue an attachment to compel his attendance, and the said witness shall moreover be liable to the party for refusing to attend the same as in trials at law.

Any one of the arbitrators may administer oaths and affirmations to witnesses; they may punish contempts committed in their presence during the hearing of a cause, the same as a court of record, and may admit depositions to be read in evidence, the same as in trials at law.

SEC. 6. The award of the arbitrators, or a majority of them, shall be drawn up in writing, and signed by such arbitrators, or a majority of them, and a true copy of such award shall, without delay, be delivered to each of the parties thereto.

SEC. 7. If either of the parties shall neglect to comply with said award, the other party may, at any time within one year from the time of such failure, file such award, together with the submission or arbitration bond, in the court named in the submission.

SEC. 8. The party filing such award may, at the next term after such filing, by giving four days' notice of his intention, to the opposite party, and if no legal exceptions are taken to such award or other proceedings, have final judgment thereon, as on the verdict of a jury, for the sum specified in said award to be due, together with the costs of arbitration and of the court; and execution may issue therefor as in other cases.

SEC. 9. When the award requires the performance of any act other than the payment of money, the court rendering such judgment shall enforce the same by rule, and the party refusing or neglecting to comply with such rule, may be proceeded against by attachment or otherwise, as for a contempt.

SEC. 10. If any legal defects appear in the award, or other proceedings, or if it shall be made to appear on oath or affirmation, that said award was obtained by fraud, corruption or other undue means, or that such arbitrators misbehaved, said court may set aside such award.

SEC. 11. If there be any evident miscalculation or misdescription, or if the arbitrators shall appear to have awarded upon matters not submitted to them, not affecting the merits of the decision upon the matters submitted, or where the award shall be imperfect in some matter of form, not affecting the merits of the controversy; and where such errors and defects, if in a verdict, could have been lawfully amended or disregarded by the court, any party aggrieved may move the court to modify or correct such award.

SEC. 12. Application to set aside, modify or amend such award, as provided in the two preceding sections, must be made before the entry of final judgment on such award: *Provided*, Nothing herein contained shall be so construed as to deprive courts of chancery of their jurisdiction as in other cases.

SEC. 13. Writs of error and appeals may be taken from any decision of the court, by the party deeming himself aggrieved, as in other cases; and if the Supreme Court shall remand the case, such further proceedings shall be had as the nature of the case may require.

SEC. 14. Each arbitrator shall be allowed for every day's attendance to the business of his appointment, one dollar, to be paid in the first instance by the party in whose favor the award shall be made, but to be recovered of the other party with the other costs of suit, if the award or final decision shall entitle the prevailing party to recover costs. Witnesses shall receive the same fees for attendance at arbitrations, as shall be allowed them in the circuit courts. Sheriffs, constables, clerks and justices of the peace, shall be entitled to the same fees for services performed in relation to any arbitration, as shall be allowed by law for the like services in their respective courts.

SEC. 15. Arbitrators may be compelled by order of the court in which any cause submitted to them shall be pending, to proceed to a hearing thereof, and to make report without unnecessary delay.

SEC. 16. When any cause pending in any court, shall be referred, as herein provided, an entry of such reference shall be made on the record, and day shall be given to the parties, from time to time, until the arbitrators report, or they be thereof discharged, on filing such report.

APPROVED: March 3, 1845.

CHAPTER VIII.

ATTACHMENTS BEFORE JUSTICES.

SECTION

1. Affidavit to be filed by creditor; what facts it shall contain; writ of attachment may issue; against what property; when writ returnable.
2. Form of writ.
3. Bond to be taken; its penalty; condition.
4. Form of condition of bond.
5. Duty of constable; writ how served; return; property may be pursued to any county.
6. Want of form, how amended; when attachment may be quashed.
7. Duty of justice in case of service or appearance; if there be no service or appearance, case continued, and ten days' notice given; substance and proof of notice.
8. Duty of justice in such case, to try, render judgment and order sale; continuance.
9. Garnishees to be summoned to answer; return to such summons.
10. Justice to make entry; continue as to garnishee; try as to defendant.
11. If judgment be against defendant, garnishees summoned to appear, &c.; judgment and execution against them.

SECTION

12. If garnishee appear, trial to be had; its incidents; judgment therein.
13. Effect of judgment in attachment; execution not to issue until property is sold.
14. If defendant is not personally served, what property may be sold; defendant may retain property by giving bond; its conditions; duty of constable; right of plaintiff.
15. Several judgments of equal date, equally binding; *proviso* as to property re-captured out of county.
16. Rights of garnishees as to their defence.
17. Execution not to issue against garnishee until debt be due.
18. Garnishee may deliver up effects of defendant.
19. Proceedings against non-resident joint debtors; how instituted, and conducted; what property liable in such cases.
20. Right of property may be tried.
21. Affidavit, how sworn to.
22. Construction of this chapter.
23. Abatement of suits in attachment.

SECTION 1. If any creditor, his agent or attorney, shall file an affidavit with any justice of the peace in this State, setting forth that any person is indebted to such creditor, in a sum not exceeding one hundred dollars, and that such debtor has departed, or is about to depart from this State, with the intention of having his effects removed from this State; or is about removing his property from this State, to the injury of such creditor; or that such debtor conceals himself, or stands in defiance of an officer, so that process can not be served upon him; or that such debtor is not a resident of this State, it shall be lawful for the justice to grant a writ of attachment against the personal estate, goods, chattels, rights, moneys and effects of the debtor, directed to any constable of his county, and returnable within thirty days from the date thereof.

SEC. 2. The writ of attachment required in the preceding section, shall be, substantially in the following form:

STATE OF ILLINOIS, }
 COUNTY, } Sct.

The people of the State of Illinois, to any constable of said county, greeting: Whereas, A. B., (or agent or attorney of A. B., as the case may be,) hath complained on oath (or affirmation) before C. D., a justice of the peace in and for said county, that E. F. is justly indebted to the said A. B., in the amount of dollars, and oath (or affirmation) having been also made

that the said E. F. so absconds or conceals himself, or stands in defiance of a peace officer, authorized to arrest him or her, with civil process, so that the ordinary process of law can not be served on him (or her as the case may be,) and the said A. B., having given bond and security according to the directions of the act in such cases made and provided; We therefore, command you that you attach so much of the personal estate of the said E. F. to be found in your county as shall be of value sufficient to satisfy the said debt and costs, according to the complaint, and such personal estate so attached, in your hands to secure, or so to provide that the same may be liable to further proceedings thereon, according to law, before the undersigned justice of the peace. And in case personal property of value sufficient can not be found, that you summon all persons whom the plaintiff or his agent shall direct, to appear before said justice, on the day of next, then and there to answer what may be objected against him or them, when and where you shall make known how you have executed this writ; and have you then and there this writ. Given under my hand and seal, this day of 18 .

C. D., Justice of the Peace. Seal.

SEC. 3. Upon the issuing of any such writ of attachment, the justice shall take from the creditor, his agent or attorney, a bond to the defendant with good security, to be approved by said justice, in a penalty of at least double the amount of the plaintiff's claim, conditioned that said creditor will pay to the defendant, and to all others interested in such attachment, or the proceedings to grow out of it, all damages and costs which may be sustained by reason of the wrongful suing out of said attachment.

SEC. 4. The condition of the bond required in the preceding section, shall be substantially as follows :

The condition of the above obligation is such that, whereas the above bounden hath, on the day of the date hereof, prayed an attachment at the suit of against the personal estate of the above named for the sum of and the same being about to be sued out, returnable on the day of before (said Justice.) Now if the said shall prosecute his suit with effect, or in case of failure therein, shall well and truly pay and satisfy the said all such costs in such suit, and such damages as the said may sustain, by reason of wrongfully suing out the said attachment, then the above obligation to be void, else to remain in full force and virtue.

Witness our hands and seals, this day of 18 .

Seal.

Seal.

SEC. 5. The constable to whom any attachment may be delivered, shall without delay execute the same, by levying on the personal property of the defendant, of value sufficient to satisfy the debt or damages claimed to be due, and all costs attending the collection of the same; he shall also read the same to the defendant, if the defendant can be found in the county, and make return thereof stating how he has executed the same. If the defendant, or any other person for him shall be in the act of removing such personal property, the officer may pursue and take the same, in any county in this State, and convey the same to the county from which such attachment issued.

SEC. 6. No attachment shall be abated or dismissed for want of form, if the essential matters required in this chapter be substantially set forth: and justices of the peace shall allow any amendment to be made, of any affidavit, writ, return or

bond, or allow a new affidavit or bond to be filed, which may be necessary to obviate objections to the same; and in cases of appeals to the circuit courts, the courts shall allow amendments as aforesaid. And in case a plea in abatement, traversing the facts set forth in the affidavit, shall be filed, and if, on a trial to be had thereon, the issue be found for the defendant the attachment shall be quashed.

SEC. 7. Upon the return of any attachment issued by a justice of the peace, if it shall appear that the defendant has been personally served with the same; or if such defendant shall appear without such service, the justice shall proceed to hear and determine the cause, as in cases of proceeding by summons. But if it does not appear that the defendant has been served, and no appearance be entered by the defendant as aforesaid, the justice shall continue the case ten days, and shall immediately prepare a notice to be posted up at three public places in the neighborhood of the justice, directed to the defendant, and stating the fact, that an attachment had been issued, and at whose instance, the amount claimed to be due, and the time and place of trial; and also stating, that unless the said defendant shall appear at the time and place fixed for trial, judgment will be entered by default, and the property attached ordered to be sold to satisfy the same; which notice shall be delivered to the constable, who shall post three copies of the same at three public places in the neighborhood of the justice, at least eight days before the day set for trial; and on or before that day he shall return the notice delivered to him by the justice, with an endorsement thereon, stating the time when and the place where he posted copies as herein required.

SEC. 8. When notices shall be given of any proceedings by attachment, as required by the seventh section of this chapter, the justice shall, on the day set for trial of the cause, proceed to hear and determine the same, as though process had been personally served upon the defendant, and if judgment be given against the defendant, shall order a sale of the property attached, or so much thereof as will satisfy the judgment, and all costs of suit. But if the constable shall have failed to post the notices as herein required, the justice shall again continue the cause, and require notices to be posted as aforesaid previous to any trial of the cause.

SEC. 9. When any constable shall be unable to find personal property of any defendant sufficient to satisfy any attachments issued under the provisions of this chapter he is hereby required to notify any and all persons within his county, whom the creditor shall designate as having any property, effects or choses in action in his possession or power belonging to the defendant, or who are in any wise indebted to such defendant, to appear before such justice on the return day of the attachment, then and there to answer upon oath what amount he or she is indebted to the defendant in the attachment, or what property, effects or choses in action he or she had in his or her possession or power, at the time of serving the attachment. The person or persons so summoned, shall be considered as garnishees, and the constable shall state in his return, the names of all persons so summoned, and the date of service on each.

SEC. 10. When an attachment shall be returned executed upon any person as garnishee, the justice shall make an entry upon the record of his proceedings in the cause, stating the name of each person summoned, and continue the case as to such garnishee, and shall proceed with the cause as against the defendant in the attachment as though the attachment had been levied on personal property.

SEC. 11. When judgment is entered by a justice of the peace against a defendant in attachment, and any person or persons have been summoned as garnishee in

the case, it shall be the duty of the justice to issue a summons against each person so summoned, requiring him or her to appear before the justice at a time and place to be fixed in the summons, not less than five nor more than fifteen days from the date thereof, and show cause, if any he or she has, why a judgment shall not be entered against him or her, for the amount of the judgment and costs against the defendant in attachment, which summons shall be served and returned by some constable of the county, and on the return day thereof, if any person so summoned shall fail to appear, the justice shall enter judgment against the person so failing to appear, for the amount of the judgment obtained against the defendant in attachment, and execution shall be issued thereon, as in other cases.

SEC. 12. If any garnishee shall appear at the time and place required by the constable as aforesaid, and shall upon oath deny all indebtedness to the defendant in the attachment, and deny having any property or effects or choses in action in his possession or power belonging to such defendant, the justice shall forthwith discharge him, unless the plaintiff in the attachment shall satisfy the justice by other testimony that the garnishee was indebted to the defendant in the attachment, or had property, effects, or choses in action in his possession or power, at the time he was garnisheed; in which case the justice shall give judgment in the premises according to the right and justice of the cause, and issue execution as in other cases.

SEC. 13. Judgments obtained under the provisions of this chapter, where the defendant has been personally served with process, or shall have appeared to the action, shall have the same force and effect as judgments obtained upon a summons; but the property attached shall be sold before any execution is issued upon such judgment, and if such property shall not sell for a sum sufficient to pay the judgment and costs, execution may be issued to collect the balance.

SEC. 14. Judgments obtained under the provisions of this chapter, when the defendant has not been personally served with process, and no appearance being entered, shall only authorize a sale of the property levied upon, and proceedings against garnishees to collect the amount thereof. Defendants in attachments issued under the provisions of this chapter, where property may be levied upon, or the person in whose possession the property may be found, may retain possession of such property upon executing a bond to the plaintiff in the attachment with good security, in a penalty of double the amount claimed by the attachment, conditioned that the property shall be delivered to any constable of the county whenever demanded, to be sold in satisfaction of any judgment which may be obtained in the attachment suit, or in case the property is not delivered, that the obligors will pay and satisfy the said judgment and costs; and when a bond shall be executed, the constable shall return the same with the attachment, and upon a breach of any condition thereof, the plaintiff shall have a right to prosecute suit thereon, and to recover the amount due upon his judgment and costs.

SEC. 15. In all cases arising under the provisions of this chapter, when two or more attachments shall be levied on the same property, or be proved on the same garnishee, and judgment shall be entered on the same day, the proceeds of the property attached, or the money obtained from garnishees, shall be divided among the several plaintiffs in attachment, according to the amount of their judgments respectively: *Provided*, That when the property sought to be attached shall have been removed from the county in which the attachment issued, and shall be overtaken and returned to such county, the claim of such attaching creditor shall have priority over attachments subsequently issued.

SEC. 16. Persons summoned as garnishees, may set up the same defence in trials under this chapter, as they might against the defendant in the attachment; and may, in like manner, make any set-off against the defendant, whether the same be due or not.

SEC. 17. Whenever judgment shall have been rendered against any garnishee, and it shall appear that the debt from him to the defendant in the attachment, is not yet due, execution shall not issue against him until twenty days after the same shall become due: *Provided*, The plaintiff may swear out execution as in other cases, after said debt becomes due.

SEC. 18. Any garnishee having effects of the defendant in his hands, may, by delivering the same, or any part thereof to the constable, and taking his receipt therefor, be discharged from his liability respecting such effects so delivered.

SEC. 19. When two or more persons not residing in this State, are jointly indebted, either as joint obligors, partners or otherwise, the writ or writs of attachment may be issued against the separate and joint estate of such debtors, or any of them, either by their proper names, or by, or in, the name or style of the partnership, or by whatever other name or names such joint debtors shall be generally reputed, known or distinguished in this State, or against the heirs, executors or administrators of them or either of them; and the goods, chattels, rights, credits and effects of such debtors, or either or any of them shall be liable to be seized and taken for the satisfaction of any just debt or other legal demand, and may be sold to satisfy the same.

SEC. 20. The right of property may be tried, and appeals taken in all cases arising under this chapter, in the same manner, as when property is taken on execution, or judgment rendered in ordinary cases.

SEC. 21. The affidavit required in the first section of this chapter may be sworn to in the manner prescribed in section thirty-two of chapter nine of the Revised Statutes.

SEC. 22. This chapter shall be construed in all courts in the most liberal manner for the detection of fraud.

SEC. 23. The provisions of chapter one of the Revised Statutes shall apply as well to suits in attachment, as to other cases.

APPROVED: March 3, 1845.

CHAPTER IX.

ATTACHMENTS IN CIRCUIT COURTS.

SECTION

1. Affidavit of indebtedness to be filed; its contents; writ may issue; against what property.
2. Form of writ.
3. Officer to execute writ; on what property; to what amount; may pursue and retake property; personal service of writ on defendant; return of writ.

SECTION

4. Bond required before writ issues; bond and affidavit to be filed; when writ void.
5. Condition of bond.
6. Proceedings against joint debtors.
7. Proceedings against defendants by reputed names, titles, &c., valid; proceedings may be had against heirs, &c., of deceased persons.
8. Want of form not fatal, if amended; writ quashed, if, on trial had, issue be for defendant.

SECTION

9. Officer attaching to retain property, unless bond be given for its forthcoming; then, to be restored.
10. If bond forfeited, may be assigned to plaintiff; or judgment may be against the sheriff; remedy of sheriff.
11. Proceedings against sheriff, when he fails to return sufficient bond.
12. When sufficient property is not found, sheriff to summon garnishees.
13. When defendant is not personally served, publication to be made; defendant not required to give bond.
14. On return of writ published notice to be given; contents of notice; if defendant appear and give bail, property to be liberated and garnishee discharged.
15. If no defence is made, judgment; estate attached to be sold; judgment against garnishee; effect thereof.
16. Conditional judgment, when to be entered against garnishee; *sci. fa.* to issue; further proceedings.
17. When judgment is had against garnishee and his debt to defendant is not due, execution stayed; no judgment on negotiable instruments not due.
18. Plaintiff may file interrogatories and compel garnishee to answer; duty of garnishee.
19. If garnishee does not make true return, trial to be had; judgment in such case and its effect.
20. Testimony of non-resident witnesses, how taken.
21. Other parties interested, may interplead; trial of right of property.

SECTION

22. Effect of judgment by default; and of judgment on appearance and trial.
23. Goods of a perishable nature may be sold, if not replevied; money, how applied.
24. When live stock is attached, it may be fed; sheriff's compensation therefor.
25. Defendant may be allowed to set off claims against plaintiff; garnishee may be allowed to set off claims against both.
26. When several judgments at same time, creditors to be paid out of effects, *pro rata*; *proviso*, creditor retaking removed property has preference.
27. Attachments may be served on Sunday, in certain cases.
28. Either party may have appeal or writ of error; may try the right of property.
29. Plaintiff desiring return of property, to give bond for payment of judgment; attachment to be dissolved and property restored, and all proceedings set aside.
30. Plaintiff may have writ of attachment pending a suit at law, in aid thereof.
31. When writ issues to other county, sheriff thereof shall levy and return as in other cases.
32. Before what officer affidavit shall be sworn to; when sworn to out of State, how authenticated.
33. Non-resident joint debtors, proceedings against; whose property liable in such cases.
34. Construction of this chapter liberal for the detection of fraud.
35. As to abatement of suits in attachment.

SECTION 1. If any creditor, his agent or attorney shall file an affidavit in the office of the clerk of the circuit court of any county in this State, setting forth that any person is indebted to such creditor, in a sum exceeding twenty dollars, stating the nature and amount of such indebtedness as near as may be, and that such debtor has departed, or is about to depart from this State, with the intention of having his effects removed from this State; or is about to remove his property from this State, to the injury of such creditor; or that such debtor conceals himself, or stands in defiance of an officer, so that process can not be served upon him; or is not a resident of this State, it shall be lawful for such clerk to issue a writ of attachment, directed to the sheriff of his county, returnable like other writs, commanding him to attach the lands, tenements, goods, chattels, rights, credits, moneys and effects of said debtor, of every kind, or so much thereof as will be sufficient to satisfy the claim sworn to, with interest and costs of suit, in whose hands or possession the same may be found.

SEC. 2. The writ of attachment required in the preceding section shall be substantially in the following form:

"The people of the State of Illinois, to the sheriff of _____ county, greeting: Whereas, A. B. (or agent or attorney of A. B. as the case may be,) hath complained on oath (or affirmation) to _____ clerk of the circuit court of _____ county, that C. D. is justly indebted to the said A. B. to the amount of _____, and oath (or affirmation) having been also made, that the said C. D. resides out of this State, or absconds, or conceals himself or herself, or stands in defiance of a civil officer authorized to arrest him or her with civil process, so that the ordinary process of law can not be served upon him, or is about to depart this State with intention to have his effects and personal estate removed without the limits of the same, or has left the State with the intention of having his effects and personal estate removed therefrom (as the case may be) and the said _____ having given bond and security according to the directions of the act in such case made and provided: We there-

fore command you, That you attach so much of the estate, real or personal, of the said C. D. to be found in your county, as shall be of value sufficient to satisfy the said debt and costs according to the complaint: and such estate so attached in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, according to law, at a court to be holden at for the county of upon the day of next, so as to compel the said C. D. to appear and answer the complaint of the said A. B., and that you also summon as garnishee, to be and appear at the said court on the said day of next, then and there to answer to what may be objected against him, when and where you shall make known to the said court how you have executed this writ, and have you then and there this writ. Witness, clerk of the said court, this day of in the year of our Lord," &c., which attachment shall be signed by the clerk, and the seal of the court affixed thereto.

SEC. 3. Such officers shall, without delay, execute such writ of attachment upon the lands, tenements, goods, chattels, rights, credits, moneys and effects of the debtor, of sufficient value to satisfy the claim sworn to, with costs of suit, as commanded in said writ. If the defendant, or any person for him, shall be in the act of removing any personal property, the officer may pursue and take the same in any county in this State, and return the same to the county from which such attachment issued. He shall also serve said writ upon the defendant therein if he can be found, by reading the same to him or delivering a copy thereof. The return to such writ shall state the particular manner in which the same was served.

SEC. 4. Every clerk before granting an attachment as aforesaid, shall take bond and security from the party for whom the same shall be issued, his or her agent or attorney, payable to the defendant in double the sum sworn to be due, conditioned for satisfying all costs which may be awarded to such defendant, or to any others interested in said proceedings, all damages which shall be recovered against the plaintiff for wrongfully suing out such attachment; which bond, with affidavit or affirmation of the party complaining, his or her agent, or attorney, shall be filed in the office of the clerk granting the attachment. Every attachment issued without a bond and affidavit taken and returned as aforesaid, is hereby declared illegal and void, and shall be dismissed.

SEC. 5. The condition of the bond required in the preceding section, shall be substantially in the following form:

"The condition of this obligation is such, that whereas the above bounden hath, on the day of the date hereof, prayed an attachment out of the circuit court of said county, at the suit of against the estate of the above named for the sum of and the same being about to be sued out of said court, returnable on the day of next, to the term of the court then to be holden: Now if the said shall prosecute his suit with effect, or in case of failure therein shall well and truly pay and satisfy the said all such costs in said suit, and such damages as shall be awarded against the said his heirs, executors or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, then the above obligation to be void, otherwise to remain in full force and effect."

SEC. 6. In all cases where two or more persons are jointly indebted, either as partners or otherwise, and an affidavit shall be filed as provided in the first section of this chapter, so as to bring one or more of such joint debtors within its provisions, and amenable to the process of attachment, then the writ of attachment shall issue against the property and effects of such as are so brought within the provis-

ions of this chapter; and the officer shall be also directed in said writ to summon all such joint debtors as may be named in the affidavit filed in the case, to answer to the said action, as in other cases of attachment.

SEC. 7. It shall be sufficient in all cases of attachment, to designate defendants by their reputed names, by surnames, and joint defendants by their separate or partnership names, or by such names, styles or titles as they are usually known; and heirs, executors and administrators of deceased defendants shall be subject to the provisions of this chapter, in all cases in which it may be applicable to them.

SEC. 8. No writ of attachment hereafter to be issued shall be quashed, nor the property taken thereon restored, nor any garnishee discharged, nor any bond by him given cancelled, nor any rule entered against the sheriff discharged, on account of any insufficiency of the original affidavit, writ of attachment or attachment bond, if the plaintiff, or some credible person for him, shall cause a legal and sufficient affidavit or attachment bond to be filed, or the writ to be amended in such time and manner as the courts shall in their discretion direct; and in that event the cause shall proceed as if such proceedings had originally been sufficient; *Provided*, That in case any plea in abatement traversing the facts in the affidavit shall be filed, and a trial shall be thereon had, if the issue shall be found for the defendant, the attachment shall be quashed.

SEC. 9. The officer serving the writ, shall take and retain the custody and possession of the property attached, to answer and abide by the judgment of the court, unless the person in whose possession the same may be found, shall enter into bond and security to the officer, to be approved by him, in double the value of the property so attached, with condition that the said estate and property shall be forthcoming to answer the judgment of the court in said suit. The sheriff shall return such bond to the court in which the suit is brought, on the first day of the term to which such attachment is returnable.

SEC. 10. If such bond shall be forfeited, the sheriff may assign such bond to the plaintiff in the attachment, by a writing thereon, under his hand, in the presence of two or more credible witnesses, and after such assignment the plaintiff may bring a suit in his own name thereupon. If the plaintiff will not accept such assignment of such bond, and the court shall adjudge such security insufficient, such sheriff shall be subject to the same judgment and recovery, and have the same liberty of defence as if he had been made defendant in the attachment, unless good and sufficient security shall be given, and bond filed during the term of the court to which such attachment is returnable, at which term the objections to the sufficiency of the security taken, shall be made to entitle the party suing out the attachment, to proceed against the sheriff; and execution may issue thereupon as in other cases of judgment. And whenever the judgment of the plaintiff, or any part thereof, shall be paid or satisfied by any such sheriff, he shall have the same remedy against the defendant for the amount so paid by him, as is now provided by law for bail against their principal, where a judgment is paid or satisfied by them.

SEC. 11. If the sheriff shall fail to return a bond taken by virtue of the provisions of this chapter, or shall have neglected to take one when he ought to have done so, in any attachment issued under any provisions of this chapter, the plaintiff in the attachment may cause a rule to be entered at any time during the first two days of the term, to which the writ is returnable, requiring the said sheriff to return the said bond; in case no bond has been taken, to shew cause why such bond was not taken.

If the said sheriff shall not return the said bond within one day thereafter, or shew legal and sufficient cause why the said bond had not been taken, judgment shall be entered up against him for the amount of the plaintiff's demand, with costs of suit; execution may thereupon issue for the same, whenever judgment shall have been entered against the defendant in the attachment.

SEC. 12. When the sheriff shall be unable to find property of any defendant, sufficient to satisfy any attachment issued under the provisions of this chapter, he is hereby required to summon all persons within his county, whom the creditor shall designate, as having any property, effects, or choses in action, in their possession or power belonging to the defendant, or who are in any wise indebted to such defendant, to appear before the court to which the writ is returnable, on the return day of the attachment, then and there to answer upon oath, what amount they are indebted to the defendant in the attachment, or what property, effects or choses in action he or she had in his or her possession or power, at the time of serving the attachment. The person or persons so summoned, shall be considered as garnishees, and the sheriff shall state in his return, the names of all persons so summoned, and the date of service on each.

SEC. 13. When any attachment shall be issued out of the circuit court and levied or served on a garnishee, it shall be the duty of the sheriff to return the same if required by the plaintiff, and on return thereof, the clerk shall give notice for four weeks successively in some newspaper published in this State, most convenient to the place where the court is held, of such attachment, and at whose suit, against whose estate, for what sum, and before what court the same is pending, and that unless the defendant shall appear on the return day of such writ, judgment will be entered, and the estate attached will be sold: *Provided*, That in case of foreign attachment, if sixty days shall not intervene between the first insertion of such notice, and the first term of the court, then the cause shall be continued until the next term of the court. Any defendant in attachment may appear and plead, without giving bail or entering into any bond.

SEC. 14. On the return of any writ of attachment against a defendant, it shall be the duty of the clerk of the court in which the suit is pending, to give notice for four weeks successively in some newspaper published in this State, most convenient to the place where the court is held, of such attachment, and at whose suit, against whose estate, for what sum, and before what court the same is pending; and that unless the defendant shall appear, give bail, and plead within the time limited for his or her appearance in such case, judgment will be entered, and the estate so attached will be sold. If the defendant appear, put in sufficient bail, and plead as aforesaid, his estate so attached shall be liberated, and the garnishee or garnishees, if any, discharged.

SEC. 15. If any attachment as aforesaid shall be returned executed, and the estate attached shall not be replevied, or defence shall not be made as this chapter directs, the plaintiff shall be entitled to judgment for his whole debt and costs, having established the existence of such debt, by legal testimony, and may thereupon take execution for the same according to law, as provided in other cases in debt. All the estate attached and not replevied, shall be sold for, and towards satisfying the plaintiff's judgment in the same manner as such property is required to be when taken in execution on a writ of *feri facias*. Where an attachment shall be returned served in the hands of any garnishee, it shall be lawful upon his or her appearance and examination in the manner as is by this chapter directed, to enter up judgment and

award execution against every such garnishee, judgment having been first entered against the original debtor, for all sum or suns of money due from him or them, to the defendant in the attachment, or in his, her, or their custody, or possession, for the use of such original debtor, or so much thereof as shall be of value sufficient to satisfy the debt and costs of the complaint. All goods and effects whatsoever in the hands of any garnishee or garnishees belonging to such defendant, shall also be liable to satisfy such judgment.

SEC. 16. Where any garnishee shall be summoned by the sheriff or other officer in the manner aforesaid, and shall fail to appear and discover on oath or affirmation, as by this chapter, is directed, it shall be lawful for the court, after solemnly calling the garnishee, and such court is hereby authorized and required to enter a conditional judgment against such garnishee, and thereupon a *scire facias* shall issue against such garnishee, returnable to the next term of the court, to shew cause if any he have, why final judgment should not be entered against him upon such *scire facias* being duly executed and returned; if such garnishee shall fail to appear, accordingly, and discover on oath or affirmation in the manner aforesaid, the court shall confirm such judgment and award execution for the plaintiff's whole judgment and costs, and if upon the examination of any garnishee, it shall appear to the court that there is any of the defendant's estate in the hands of any person or persons who have not been summoned, such court shall, upon motion of the plaintiff, grant a judicial attachment, to be levied upon the property in the hands of such person or persons having any of the estate of the defendant in his or their possession or custody, who shall appear and answer, and be liable as other garnishees. When any garnishee shall deliver to the sheriff all the goods, chattels and effects whatsoever, found or confessed to be in his or her possession belonging to the defendant, or any part thereof, the same shall be received in discharge of so much of the judgment as the same shall be appraised to by the jury aforesaid, who shall enquire and return the value thereof, according to the evidence which may be submitted to them relative thereto.

SEC. 17. Whenever judgment shall be rendered against any garnishee, and it shall appear that the debt from him to the defendant in the attachment is not yet due, execution shall not issue against him until twenty days after the same shall become due; nor shall judgment be rendered against a garnishee, for a debt founded on a negotiable instrument, unless the same shall be due at the time of rendering the judgment.

SEC. 18. If any such writ of attachment shall be served as aforesaid, it shall and may be lawful for any such plaintiff at any time during the return term of the said court, to prepare, exhibit and file, all and singular such allegations and interrogatories in writing, upon which he or she shall be desirous to obtain, and compel the answer of any and every garnishee, touching the lands, tenements, goods, chattels, moneys, credits and effects of the said defendants, and the value thereof, in his, her or their possession, custody or charge, or from him, her or them, due and owing to the said defendant at the time of the service of the said writ, or at any time after, or which shall or may thereafter become due; and it shall be the duty of each and every such garnishee, to exhibit and file under his oath or affirmation, on or before the third day of the next succeeding term, full, direct and true answers to all and singular the allegations and interrogatories by the said plaintiff supported, exhibited and filed, in the manner herein before directed and described.

SEC. 19. Whenever the plaintiff in any attachment shall allege, that any garnishee summoned in such attachment, hath not discovered the true amount of debts due

from him to the defendant, or what goods and chattels belonging to the defendant, are in his or her possession, the court shall direct, without the formality of pleading, a jury to be empannelled immediately, (unless good cause be shown by either party for a continuance,) to enquire what is the true amount due from such garnishee to the defendant, and what goods and chattels are in his possession, belonging to the defendant. Upon such examination, witnesses may be examined by the respective parties, as in ordinary cases. If the finding of the jury shall be against such garnishee, the court shall grant judgment in the same manner as if the facts found by the jury had been confessed by him or her, on his or her examination, and costs of inquest; and if the jury find in favor of the garnishee, he shall recover his costs against the plaintiff.

SEC. 20. Where any witness resides out of the State, or out of the county in which any attachment may be pending, and in which the testimony of such witness may be required, it shall be lawful for either party or garnishee in such attachment, on filing interrogatories with the clerk of the court from which such attachment has issued, and giving ten days' notice of the time and place of taking such testimony, by serving a copy of such notice on the opposite party, or if such party shall be absent from, or reside out of the county, then by affixing a notice in writing thereof on the door of the court house of such county, at least ten days before the day set for the taking thereof, to obtain a commission from the clerk of the court to take the testimony of such witness or witnesses on such interrogatories; such examination may be read on the trial on motion of either of the parties or garnishee.

SEC. 21. In all cases of attachment, any person other than the defendant, claiming the property attached, may interplead without giving bail, but the property attached shall not thereby be replevied; and the court shall immediately (unless good cause be shewn by either party for a continuance,) direct a jury to be empannelled to enquire into the right of property; in all cases where the jury find for a claimant, such claimant shall be entitled to his costs; and where the jury find for the plaintiff in the attachment, such plaintiff shall recover his costs against such claimant.

SEC. 22. If judgment by default shall be entered on any attachment against the estate of the defendant, in any court of this State, no execution shall issue thereon except against the goods and chattels, lands and tenements, on which the attachment may have been served, or against a garnishee or garnishees, who shall have money or other property in his or their hands belonging to the defendant: if the defendant shall appear, put in bail, and plead to the suit, the judgment rendered therein shall have the same force and effect as if a *capias ad respondendum* had been served on the person of the defendant.

SEC. 23. When any goods and chattels shall be levied on by virtue of any attachment, and the sheriff or other proper officer, in whose custody such goods and chattels are, shall be of opinion that the same are of a perishable nature, and in danger of immediate waste and decay, such sheriff or other officer as aforesaid, shall summon three respectable freeholders of his county, who shall examine the goods and chattels so levied on; and if the said freeholders shall on oath or affirmation certify that, in their opinion, they are of a perishable nature, and in danger of immediate waste and decay, and if the person or persons to whom such goods and chattels belong, his, her or their agent or attorney, shall not within twenty days after serving such attachment, replevy the same, then such goods and chattels shall be sold at public vendue by the sheriff or other proper officer, he having first advertised such sale at the court house, and two other public places in his county, at least ten days

before the sale; the money arising from such sale shall be liable to the judgment obtained upon such attachment, and deposited in the hands of the clerk of the court to which the process shall be returnable, there to abide the event of such suit.

SEC. 24. When any sheriff or other officer shall serve an attachment on slaves, or indentured or registered colored servants, or horses, cattle or live stock, and the same shall not be immediately replevied or restored to the debtor, it shall and may be lawful for such officer, and he is hereby required to provide sufficient sustenance for the support of such slaves indentured, or registered colored servants, and live stock, until the same shall be sold, or otherwise legally disposed of, or discharged from such attachment. He shall receive therefor a reasonable compensation, to be ascertained and determined by the court out of which the attachment issued, and the same shall be charged in the fee bill of such officer, and shall be collectable as part of the costs in the attachment.

SEC. 25. Any defendant against whom an attachment may be sued out under the provisions of this chapter, or garnishee, may avail himself in his defence of any set-off properly pleadable by the laws of this State, notwithstanding such set-off may not be due at the time of suing out such attachment, or at the trial thereof; any claim due or not due, may be set off by the garnishee, whether it exist against the plaintiff or defendant in the attachment.

SEC. 26. In all cases where more than one attachment shall be issued against the same person or persons, and returned to the same term of the court to which they are returnable, or when a judgment in a civil action shall also be rendered at the same term against the defendant, who is the same person and defendant in the attachment or attachments, the court shall direct the clerk to make an estimate of the several amounts each attaching or judgment creditor will be entitled to out of the property of the defendant attached, either in the hands of any garnishee or otherwise, after the sale and receipt of the proceeds thereof by the sheriff, calculating such amount in proportion to the amount of their several judgments, with costs, as the same will respectively bear to the amount of the sum received, so that each attaching and judgment creditor will receive his just part thereof in the proportion to his respective demand; the clerk shall thereupon certify the several amounts thereof to the sheriff, who shall pay over to the respective parties the several sums so certified, and endorse such payments on their respective executions: *Provided*, That when the property sought to be attached, shall have been removed from the county in which the attachment issued, and shall be overtaken and returned to such county, the claim of such attaching creditor or creditors, shall have priority over other attachments.

SEC. 27. On proof being made before any judge or justice of the peace, or clerk of the circuit court within this State, that a debtor is actually absconding, or concealed, or stands in defiance of an officer duly authorized to arrest him on civil process as aforesaid, or has departed this State with the intention of having his effects and personal estate removed out of the State, or intends to depart with such intention, it shall be lawful for the clerk to issue, and sheriff or other officer to serve an attachment against such debtor, on a Sunday as on any other day, as is directed in this chapter.

SEC. 28. The plaintiff or defendant in any attachment, the garnishee and the sheriff, or either of them, who may feel aggrieved by the judgment of the court, may prosecute writs of error, and take appeals as by law is provided in other cases; and trials of the right of property may be had in the same manner as when property is taken in execution.

SEC. 29. Any defendant in attachment, desiring the return of property attached, may, at his option, instead of the bond required in the ninth section of this chapter, give like bond and security, in a sum sufficient to cover the debt and damages sworn to in behalf of the plaintiff, with all interest, damages and costs of suit, conditioned that the defendant will pay the plaintiff the amount of the judgment and costs which may be rendered against him in that suit, on a final trial, within ninety days after such judgment shall be rendered. In term time, a recognizance, in substance as aforesaid, may be taken in open court, and entered of record, in which case the court shall approve of the security and the recognizance made to the plaintiff. In either case, the attachment shall be dissolved, and the property taken restored, and all previous proceedings either against the sheriff or against the garnishees, set aside, and the cause shall proceed as if the defendant had been seasonably served with a writ of summons.

SEC. 30. Plaintiffs in any action of debt, covenant or trespass, or on the case upon promises, having commenced their action or actions, by summons, may, at any term pending such suit, and before judgment therein, on filing in the office of the clerk where such action is pending, a sufficient affidavit and bond, sue out an attachment against the lands and tenements, goods and chattels, rights, moneys, credits and effects of the defendant, which attachment shall be entitled in the suit pending and be in aid thereof, and such proceedings shall be thereupon had, as are required or permitted in original attachments, in all things as near as may be.

SEC. 31. When any attachment has issued out of the circuit court in any county, it shall be lawful for the plaintiff, at any time before judgment, to cause an attachment to be issued to any other county of this State, where the defendant may have lands, goods, chattels, rights, credits or effects, which writ of attachment, the sheriff to whom it shall be directed shall levy on the lands, goods, chattels, rights, credits and effects of the defendant in such county, and make return thereof as in other cases.

SEC. 32. The affidavit required in the first section of this chapter may be sworn to before any officer authorized by the laws of this State to administer oaths, or by any officer of any State, territory or district of the United States; the fact that the person administering such oath is duly authorized, to be proved in the same manner as in the acknowledgment and authentication of deeds.

SEC. 33. When two or more persons not residing in this State, are jointly indebted, either as joint obligors, partners or otherwise, then the writ or writs of attachment shall and may be issued against the separate estate of such debtors, or any of them, or against the heirs, executors or administrators of them or either of them; and the lands and tenements, goods and chattels, rights, credits and effects of such debtors or either of them, shall be liable to be seized and taken for the satisfaction of any just debt or other legal demand, and may be sold to satisfy the same.

SEC. 34. This chapter shall be construed in all courts in the most liberal manner for the detection of fraud.

SEC. 35. The provisions of chapter one of the Revised Statutes shall be applicable as well to proceedings in attachment as to other cases.

APPROVED: March 3, 1845.

CHAPTER X.

ATTACHMENTS OF BOATS AND VESSELS.

SECTION

1. Boats, vessels, &c. may be attached; for what claims; claims of mariners, &c., preferred.
2. Claimant may have attachment in county in which boat is found, on making affidavit and giving bond; to whom bond given; remedies of injured parties under it.
3. On return of writ, declaration to be filed; its contents; bill of particulars to be filed; trial; judgment; execution.

SECTION

4. Engineers, pilots, &c., may attach for arrears of wages.
5. If sufficient bond be given, boat may be released.
6. Attachment not to affect other creditors, &c., after three months from time debt accrued.

SECTION 1. Boats and vessels of all descriptions, built, repaired or equipped, or running upon any of the navigable waters within the jurisdiction of this State, shall be liable for all debts contracted by the owner or owners, masters, super-cargoes or consignees thereof, on account of all work done, supplies or materials furnished by mechanics, tradesmen and others, for, on account of, or towards the building, repairing, fitting, furnishing or equipping such boats and vessels, their engines, machinery, sails, rigging, tackle, apparel and furniture; and such debts shall have the preference of all other debts due from the owners, or proprietors, except the wages of mariners, boatmen and others, employed in the service of such boats and vessels which shall first be paid.

SEC. 2. Any person having a demand, contracted as before mentioned, against any such boat or vessel, may have an attachment to be issued out of any court, or by any justice of the peace having jurisdiction thereof, in any county in this State, in which such boat or vessel may be found, either against the owner or owners, by their proper names, or by the name and style of their co-partnership, if known, otherwise against such boat or vessel, by her name or description only, authorizing and directing the seizure and detention of the same, with her engine, machinery, sails, rigging, tackle, apparel and furniture, by the sheriff or constable, upon affidavit being made of the justice of such demand, and bond given by the plaintiff, as in other cases of attachment: *Provided*, That in all cases, where such proceedings are instituted against such boat or vessel by her name or description only, the bond to be given by the plaintiff, shall be made payable to the people of the State of Illinois, but for the use and benefit of the owner or owners of such boat or vessel, who may institute a suit thereon, if damages be occasioned by the issuing of such attachment, and have recovery thereon in the same manner as if said bond had been given to such person or persons by their proper names, or in the name and style of their co-partnership.

SEC. 3. Upon the return of such attachment, the person or persons having demands of the description aforesaid, and for whose benefit such attachment was issued, shall file a written declaration or statement, against such boat or vessel, by her name or description, or against the owner or owners, if known as aforesaid, briefly reciting the nature of the demand, whether for work done, or materials, firewood, or supplies of provisions furnished, and whether at the request, of the

owner, master, supercargo, or consignee of such boat or vessel, and that such demand remains unpaid; annexing to such declaration or statement, a bill of the particulars constituting such demand, in separate and distinct items; and the like proceedings shall be had in all other respects, and the like judgment and execution as in other cases of attachment.

SEC. 4. All engineers, pilots, mariners, boatmen and others employed in any capacity, in or about the service of any such boat or vessel, who may be entitled to arrearages of wages in consequence of such service, may proceed to collect such wages under the provisions of this chapter, and shall be entitled to all the benefits hereof.

SEC. 5. If the owner or owners, master, supercargo or consignee of any such boat or vessel, seized by attachment as aforesaid shall, at any time before final judgment, give bond to the plaintiff, with security to be approved by the clerk of the circuit court, or by the judge in term time, (or justice of the peace as the case may be,) in double the amount of the demand sued for, and a sufficiency to discharge all costs which may accrue thereon, conditioned to pay and satisfy such judgment as the court (or justice of the peace) may render against such boat or vessel or defendant party, together with the costs of suit, then such boat or vessel shall be forthwith discharged from such attachment, seizure and detention; but shall nevertheless, be liable to be taken and sold on any execution to be issued on such judgment or upon the judgment which may be rendered at any time on the bond required to be given by the defendant party as aforesaid.

SEC. 6. No creditor shall be allowed to enforce the lien created under the provisions of this chapter, as against, or to the prejudice of any other creditor, or subsequent incumbrancer, or *bona fide* purchaser, unless suit be instituted to enforce such lien as provided in this chapter, within three months after the indebtedness accrues or becomes due, according to the terms of the contract.

APPROVED: March 3, 1845.

CHAPTER XI.

ATTORNEYS AND COUNSELLORS AT LAW.

SECTION

1. No person permitted to practice as attorney, &c., without license; rights.
2. Certificate of moral character.
3. Clerk of supreme court to keep roll, on which names of attorneys shall be entered; oath to be endorsed on license.
4. No person shall practice, unless enrolled; justices of supreme court may strike from the roll for mal-conduct in office.
5. If attorney refuses or neglects to pay over money collected, how punished.
6. Attorneys, judges, &c., may be arrested and held to bail, but privileged when attending court.

SECTION

7. Certain officers not to practice as attorneys at law; attorneys to take oath before being enrolled.
8. Oath of office.
9. Persons licensed in other States may practice in this State.
10. Fees, &c., received by person not licensed, may be recovered back; penalty for signing records, &c., if not authorized.
11. Parties may prosecute and plead in person; nothing herein to affect attorneys already admitted.
12. Attorneys from neighboring States may practice in this State.

SECTION 1. No person shall be permitted to practice as an attorney or counselor at law, or to commence, conduct, or defend any action, suit or plaint, in which he is not a party concerned, in any court of record within this State, either by using or subscribing his own name, or the name of any other person, without having previously obtained a license for that purpose from some two of the justices of the supreme court, which license shall constitute the person receiving the same an attorney and counsellor at law, and shall authorize him to appear in all the courts of record within this State, and there to practice as an attorney and counsellor at law, according to the laws and customs thereof, for and during his good behavior in said practice, and to demand and receive all such fees as are or hereafter may be established for any services which he shall or may render as an attorney and counsellor at law in this State.

SEC. 2. No person shall be entitled to receive a license as aforesaid, until he shall have obtained a certificate from the court of some county, of his good moral character.

SEC. 3. It shall be the duty of the clerk of the supreme court to make and keep a roll or record, stating at the head or commencement thereof, that the persons whose names are therein written, have been regularly licensed and admitted to practice as attorneys and counsellors at law within this State, and that they have duly taken the oath to support the constitution of the United States and of this State, and also the oath of office as prescribed by law, which shall be certified and endorsed on the said license.

SEC. 4. And no person whose name is not subscribed to or written on the said roll, with the day and year when the same was subscribed thereto, or written thereon, shall be suffered or admitted to practice as an attorney or counsellor at law within this State, under the penalty hereinafter mentioned, any thing in this chapter to the contrary notwithstanding; and the justices of the supreme court, in open court, shall have power at their discretion, to strike the name of any attorney or counsellor at law from the roll for mal-conduct in his office.

SEC. 5. In all cases when an attorney of any court in this State, or solicitor in chancery, shall have received, or may hereafter receive, in his said office of attorney or solicitor, in the course of collection or settlement of any claim left with him for collection or settlement, any money or other property belonging to any client, and shall, upon demand made, and a tender of his reasonable fees and expenses, refuse or neglect to pay over or deliver the same to the said client, or to any person duly authorized to receive the same, it shall be lawful for any person interested, to apply to the supreme court of this State, for a rule upon the said attorney or solicitor, to show cause, at a time to be fixed by the said court, why the name of the said attorney or solicitor should not be stricken from the roll; a copy of which rule shall be duly served upon said attorney or solicitor, at least two days previous to the day upon which said rule shall be made returnable: and if, upon the return of said rule, it shall be made to appear to the said court, that such attorney or solicitor has improperly refused or neglected to pay over or deliver said money or property so demanded as aforesaid, it shall be the duty of the said court to direct that the name of the said attorney or solicitor be stricken from the roll of attorneys in said court.

SEC. 6. Every attorney, before his name is stricken off the roll, shall receive a written notice from the clerk of the supreme court, stating distinctly the grounds of complaint, or the charges exhibited against him, and he shall, after such notice, be

heard in his defence, and allowed reasonable time to collect and prepare testimony for his justification. And every attorney whose name shall at any time be stricken from the roll by order of the court in manner aforesaid, shall be considered as though his name had never been written thereon until such time as the said justices, in open court, shall authorize him to sign or subscribe the same.

SEC. 7. All attorneys and counsellors at law, judges, clerks and sheriffs, and all other officers of the several courts within this State, shall be liable to be arrested and held to bail, and shall be subject to the same legal process, and may in all respects be prosecuted and proceeded against in the same courts, and in the same manner as other persons are, any law, usage or custom to the contrary notwithstanding: *Provided nevertheless*, Said judges, counsellors, or attorneys, clerks, sheriffs and other officers of said courts, shall be privileged from arrest while attending courts, and whilst going to and returning from court.

SEC. 8. No person who holds a commission, as a justice of the supreme court, or as judge of any circuit court, or county commissioner, shall be permitted to practice as an attorney or counsellor at law in the court in which he presides as justice of the supreme or circuit court, or county commissioner; nor shall any coroner, sheriff, deputy sheriff, jailer or constable, be permitted to practice as aforesaid in the county in which he is commissioned or appointed, nor shall any clerk of the supreme court, circuit court, or court of the county, be permitted to practice as an attorney or counsellor at law in the court of which he is clerk, and no person shall be permitted or suffered to enter his name on the roll or record, to be kept as aforesaid, by the clerk of the supreme court, or do any official act appertaining to the office of an attorney or counsellor at law, until he hath taken an oath to support the constitution of the United States and of this State, and the person administering such oath, shall certify the same on the license, which certificate shall be a sufficient voucher to the clerk of the supreme court, to enter or insert or permit to be entered or inserted on the roll of attorneys and counsellors at law, the name of the person of whom such certificate is made.

SEC. 9. The following oath of office shall be administered to every attorney and counsellor at law, before they subscribe the respective rolls, to-wit: "I swear, or affirm, that I will in all things, faithfully execute the duties of an attorney and counsellor at law, according to the best of my understanding and abilities."

SEC. 10. Any person producing a license or other satisfactory voucher, proving that he hath been regularly admitted an attorney at law, in any court of record within the United States, that he is of good moral character, may be licensed and permitted to practice as a counsellor and attorney at law, in any court in this State without examination.

SEC. 11. If any person not licensed as aforesaid, shall receive any money or any species of property, as a fee or compensation for services rendered, or to be rendered by him, as an attorney, or counsellor at law within this State, all money so received by him shall be considered as money received to the use of the person paying the same, and may be recovered back, with costs of suit, by an action for money had and received; and all property delivered or conveyed for the purpose aforesaid, or the value thereof, may be recovered back, with costs of suit, by the person conveying or delivering the same, by action of detinue, or trover and conversion, and the person receiving such money or property shall forfeit three-fold the amount or value thereof, to be recovered, with costs of suit, before any magistrate, if within a magistrate's jurisdiction; but if not, in any court of record within the

State, by action of debt, *qui tam*, the one-half to the use of the person who shall sue for and recover the same, and the other half to the use of the county in which such suit shall be brought; and if any person shall sign or cause to be signed the name of an attorney, or either of the justices of the supreme court, to any certificate or license provided for in this section, with an intent to deceive, such person shall be deemed guilty of forgery, and shall be prosecuted and punished accordingly.

SEC. 12. Plaintiffs shall have the liberty of prosecuting, and defendants shall have the privilege of defending in their proper persons, and nothing herein contained shall be so construed as to affect any person or persons heretofore admitted to the degree of an attorney or counsellor at law, by the laws of this State, or of the Illinois territory, so as to subject them to further examination, or make it necessary for them to renew their licenses.

SEC. 13. Hereafter, when any counsellor or attorney at law, residing in any of the adjacent States or territories, may desire to practice law in this State, such counsellor or attorney shall be allowed to practice in the several courts of law and equity in this State, upon the same terms, and in the same manner that counsellors and attorneys at law residing in this State now are, or hereafter may be admitted to practice law in such adjacent States or Territories.

APPROVED: March 3, 1845.

CHAPTER XII.

ATTORNEY GENERAL AND CIRCUIT ATTORNEYS.

<p>SECTION</p> <ol style="list-style-type: none"> 1. Attorney general and circuit attorneys elected once in two years; their residence; their duties; how commissioned. 2. Each to give official bond; Governor may require additional bond; if bond not given in sixty days, office to be vacated. 3. Duty of attorney general; shall attend supreme court, try cases for State and for counties; try impeachments; give advice to officers of State. 4. Attorney general and circuit attorneys shall at- 	<p>SECTION</p> <ol style="list-style-type: none"> tend circuit courts; their duties as circuit attorneys. 5. Shall attend examinations on writs of <i>habeas corpus</i>, and examinations for felonies. 6. When interested in cause, absent, &c., court may appoint substitute, with same powers, duties and fees. 7. Attorney General may call on circuit attorneys to assist him. 8. Governor may fill vacancies.
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SECTION 1. There shall be elected by the General Assembly on joint vote, once in every two years, an attorney general, who shall reside at the seat of government, and perform such duties as are by this chapter, or may hereafter be prescribed by law; and one circuit attorney in each judicial circuit, excepting that in which the seat of government is situated. Such circuit attorneys shall reside in the circuits for which they may be respectively elected, and shall perform such duties as are herein prescribed, or may be hereafter imposed by law. The attorney general shall be *ex officio* the circuit attorney for the circuit in which he resides, and shall perform the same duties therein, as other circuit attorneys are or may be required to perform; such officers, when so elected, shall be commissioned by the Governor.

SEC. 2. Previous to being commissioned as aforesaid, each of the said officers shall file in the office of the secretary of State, a bond, the attorney general in

the penal sum of five thousand dollars, and each circuit attorney in the penal sum of one thousand dollars, with good security, to be approved by the Governor conditioned that they will, respectively, faithfully pay over all such moneys as may come into their hands, belonging to the State or to any county, and that they will faithfully and with fidelity perform all duties, which are or may be, by law imposed upon them. The Governor may, at any time when he shall deem necessary, require additional bond and security to be given. And in case the attorney general or any circuit attorney, shall neglect or refuse to file any bond herein required or authorized to be taken, within sixty days after his appointment, his office shall be deemed vacant, and may be filled in like manner, as other vacancies.

SEC. 3. It shall be the duty of the attorney general to attend each of the terms of the supreme court, and there commence, prosecute or defend every cause which the people of this State, the auditor of public accounts, or any county of this State shall in any wise be a party to, or interested in the result. It shall be his further duty to prosecute all impeachments which may be tried before the supreme court or the Senate of this State. He shall also, when required, give his opinion and advice in writing, without fee or reward, to the General Assembly, or either branch thereof, upon any question of law; and to the Governor or the person exercising the office of Governor, the secretary of State, auditor of public accounts, and State treasurer, upon any question of law relating to the duties of their respective offices, which may be submitted to him by them or either of them.

SEC. 4. It shall also be the duty of the attorney general and of each circuit attorney to attend each circuit court to be held in each of the counties belonging to his judicial circuit, and to commence and prosecute all actions, suits, process, indictments and prosecutions, civil and criminal, in which the people of this State, or any county within such judicial circuit may be concerned; to defend all actions brought within such judicial circuit, against the auditor of public accounts, or any of the counties aforesaid; to prosecute all forfeited recognizances, and all suits and actions for the recovery of debts, revenues, moneys, fines, penalties and forfeitures, accruing to the people of this State, or any county within the judicial circuit aforesaid. He shall give his opinion without fee or reward, to any county commissioners' court, and to any justice of the peace within his circuit, when required so to do, upon any question of law, relating to any criminal or other matter, in which the people or any county is concerned; and he shall perform such other and further duties, as may be enjoined on him by law.

SEC. 5. It shall be the duty of the attorney general and circuit attorneys to attend, if in their power, the examination of all persons brought on *habeas corpus* before a judge of the supreme or circuit court, within their circuits respectively; and, if convenient, shall attend the examination, within their respective circuits, of persons accused of felonious crimes, on being notified of the same.

SEC. 6. When the attorney general or any circuit attorney, shall be interested in any cause or proceeding, civil or criminal, which it is, or shall be made his duty to prosecute or defend, the court in which such cause is pending, or to be brought, may appoint some competent person to prosecute or defend such cause, and in all cases where the attorney general or circuit attorney shall be absent or sick, and unable to attend to the discharge of his duties, the court in which any of his duties are required to be performed, may appoint some competent person to discharge such duties, until the attorney general or circuit attorney appear and resume the discharge of his duties; and the person so appointed shall possess

the same power in relation to such causes and the business in such court, and shall be entitled to the same fees therefor, as would have been allowed to the attorney general or circuit attorney for said services.

SEC. 7. The attorney general shall have the right to call upon any of the circuit attorneys to assist him in the prosecution, or in the defence of any suit in the supreme court, or the trial of any impeachment which it shall be the duty of the attorney general to attend to; and any circuit attorney being so required shall give his assistance accordingly.

SEC. 8. Should any vacancy occur in any of the judicial circuits in this State between the sessions of the legislature, it shall be the duty of the Governor to fill the same by the appointment of some qualified person to discharge the duties of said office, who, when so appointed, shall continue in office until his successor is duly elected and qualified as in this chapter provided.

APPROVED: March 3, 1845.

CHAPTER XIII.

AUDITOR AND TREASURER.

SECTION

1. Auditor and treasurer elected by joint vote of General Assembly; term, two years.
2. Shall give official bonds; condition thereof.
3. Not to be commissioned until bond be given; if bond not given in twenty days, office to be vacant.
4. Shall each keep an official seal; copies of papers authenticated by them to be received in evidence.
5. Governor may require additional bond; if not given, office to be vacant.
6. Governor may order bonds to be sued; judgment may be had against principal and sureties, jointly or severally.
7. Auditor to keep accounts of the State; audit accounts.
8. Shall draw warrants, and keep record thereof.
9. Auditor shall personally sign all warrants, &c.
10. Warrants to be countersigned by treasurer, and entry thereof made.

SECTION

11. Auditor to report to General Assembly.
12. Auditor shall make account against collecting officers; circuit attorneys bring suit; auditor to grant *quietusces*.
13. Treasurer shall receive, keep safely, and pay out money; keep accounts; make reports; reports to be published with laws.
14. Shall report monthly to the auditor; shall cancel and return warrants, and take receipt.
15. If treasurer die, his heirs, &c., shall pay over money, &c., to his successor, who shall report.
16. If warrant be lost, duplicate to be issued; oath and bond to be first made.
17. Offices to be kept at seat of government; clerks.
18. Auditor to commence suits, &c., in behalf of the State.

SECTION 1. There shall be elected by the joint vote of both Houses of the General Assembly, once in every two years, an auditor and a treasurer, who shall hold their offices for two years, and until their respective successors are elected and qualified.

SEC. 2. The auditor and treasurer shall, immediately after their election, execute and file in the office of the secretary of State, bonds respectively, to the people of the State of Illinois, with good and sufficient securities, to be approved by the Governor and two justices of the supreme court; the auditor in the penal sum of twenty thousand dollars, and the treasurer in the penal sum of one hundred thousand dollars, conditioned that said auditor and treasurer shall faithfully discharge all the duties of their said offices, then required, or thereafter to be required by law,

and that they will at the close of their terms of office, deliver over to their respective successors, all moneys, books, records, vouchers, papers and other property pertaining to their respective offices. Said bonds shall each contain a clause in the condition thereof, that the auditor and treasurer respectively, shall, when required by the Governor, give additional bonds, with sufficient securities, as specified in the fifth section of this chapter, to be approved and filed in like manner as the original bond.

SEC. 3. No commission shall be issued to any auditor or treasurer until he shall have given bond and security as required by this chapter. And if either shall neglect or refuse to enter into a bond as required herein, within twenty days after his election, the office shall be deemed and considered vacant, and the Governor shall immediately communicate the fact to the General Assembly, if in session, and if not, he shall fill such vacancy according to law.

SEC. 4. The auditor and treasurer shall each keep an official seal, which shall be used to authenticate all writings, papers and documents required by law to be certified from either of said offices; and copies of all papers, writings and documents legally deposited in either of said offices, when certified by the officer and authenticated by the seal of his office, shall be received in evidence in the same manner and with like effect as the originals.

SEC. 5. Whenever the Governor shall deem any bond filed by the auditor or treasurer insufficient, he may require additional bond in any penalty not exceeding that specified in the second section hereof, and if such officer shall fail, when so required, to file such bond for the space of twenty days, his office may, in the discretion of the Governor, be declared vacant, and shall be filled, as provided in the third section hereof.

SEC. 6. Whenever the condition of any bond given by the auditor or treasurer shall be broken, it shall be the duty of the Governor to order the same to be prosecuted. Suit may be instituted and prosecuted to final judgment against such auditor or treasurer, or their respective securities, or one or more of them, jointly or severally, without first establishing the liability of the auditor or treasurer, by obtaining judgment against him alone.

SEC. 7. It shall be the duty of the auditor at all times to keep the accounts of the State, with any State or territory, and with the United States, with all public officers, corporations and individuals, having accounts with this State; he shall audit all accounts of public officers who are to be paid out of the State treasury; of the members of the legislature, and all persons authorized to receive money out of the treasury, by virtue of any appropriation made, or to be made by law, particularly authorizing such account.

SEC. 8. On ascertaining the amount due any person from the treasury, the auditor shall grant his warrant on the treasury for the sum due. He shall keep a fair record of all warrants by him drawn, numbering the same in a book to be kept for that purpose.

SEC. 9. The auditor of public accounts shall hereafter, in all cases, personally sign all warrants for money, on the treasury of the State, all tax receipts, and all other papers necessary and proper for the auditor to sign.

SEC. 10. In all cases where warrants for money are issued by the auditor upon the State treasurer, the said warrants, before they are delivered to the person or persons for whose benefit the same are drawn, shall be presented by the auditor to the State treasurer, who shall personally countersign the same, and shall also

enter in a book to be kept for that purpose by him, the date, amount, and the name of the person or persons to whom the same are made payable.

SEC. 11. The said auditor shall make a fair list of all accounts by him audited, in a book by him to be kept for that purpose, as also an account of all taxes or other moneys which may be due by any person to this State, or which may be paid into the treasury; he shall make out and present to each regular session of the General Assembly, by the tenth day of the session, a report, shewing the amount of warrants by him drawn on the treasury, stating particularly on what account said warrants were drawn, and if drawn on the contingent fund, to whom, and for what they were issued. He shall also report the amount of money received into the treasury, stating particularly the source of revenue from which the same may be derived.

SEC. 12. When the auditor shall have made out abstracts of all sums due in the respective counties, and sent them to the different collectors, he shall make out in a book to be kept for that purpose, a fair account against each collector, a certified copy of which, with the seal of his office thereto attached, shall be sufficient for the attorney general or circuit attorneys, to proceed by motion or action against such delinquent collectors and their securities, before the supreme or circuit court. All *quietusses* necessary to be granted shall be issued by the auditor, under his hand and seal of office.

SEC. 13. It shall be the duty of the State treasurer, to receive the proceeds of all taxes and other public moneys of this State, and safely keep the same. He shall not pay out of the treasury any money, but on a warrant of the auditor. He shall keep a regular and fair account of all moneys and revenues he receives and pays out, agreeably to law, stating therein particularly on what account each particular sum was paid out, or received, and the time when, and lay a copy thereof before the General Assembly, by the tenth day of the session. An abstract of said reports of the auditor and treasurer, shall be prepared by the General Assembly and published with the laws of each session.

SEC. 14. It shall be the duty of the treasurer to report monthly to the auditor, the amount of money which he may have received, stating on what account the same was paid into the treasury. He shall also report monthly, an account of payments out of the treasury, and deposit with the auditor, all warrants which he may have paid or received, and take the auditor's receipt for the same; and it shall be the duty of the auditor to make entries of said reports, in books to be kept by him for that purpose. Before depositing said warrants with the auditor, the treasurer shall write the word "cancelled" on the face of each.

SEC. 15. If said treasurer die, resign or be displaced, or otherwise cease to hold his office, then such treasurer, his heirs, executors or administrators, shall regularly state the amount and deliver the moneys and warrants, together with all books, records, memoranda, papers and instruments of writing of the State, in his or their possession, or which such treasurer shall have received and not paid out according to law, to the succeeding treasurer, who shall make report thereon to the General Assembly, and the said report, if confirmed by the legislature, shall be a discharge of the bonds of the late treasurer, in which case they shall be given up to the said treasurer, his heirs, executors or administrators.

SEC. 16. If any auditor's warrant shall be lost, mislaid or destroyed, so that the same can not be presented for payment by the person entitled thereto, it shall be lawful for the auditor, at any time before such warrant shall be paid at the

treasury, to issue a duplicate warrant to the person or persons having so lost any warrant as aforesaid, on such person filing with the auditor, an affidavit in writing, sworn before some justice of the peace or judge, stating the loss or destruction of any such warrant, and the auditor shall immediately certify the same to the treasurer, who shall thereby be authorized to pay any such duplicate warrant: *Provided*, If any such warrant shall be, at the time of such loss or destruction, (which fact shall be ascertained by the oath of the party making such application, or otherwise,) negotiable, then, before such certificate shall be given by the auditor, such person shall give him satisfactory security for the refunding of the amount, together with all costs and charges, should the State afterwards be compelled to pay the original warrant.

SEC. 17. The auditor and treasurer shall keep their offices at the seat of government; and shall not hereafter employ the same person as clerk in both their respective offices, at the same time.

SEC. 18. The auditor shall be deemed the proper officer to institute all suits, motions, and other proceedings in law and equity, in which the State is plaintiff, except in cases otherwise provided by law.

APPROVED: March 3, 1845.

[AMENDED:—See appendix, Act No. 1.]

CHAPTER XIV.

BAIL.

SECTION

1. No person not a householder, resident and of sufficient property, no attorney, sheriff nor bailiff, shall be special bail.
2. In what actions bail shall be required; what facts must be proved; in what cases bail may be discharged.
3. Sheriff shall take bail; form of condition of bail bond; bond to be returned with the writ; if sheriff neglect to take sufficient bond, he shall be liable as bail.
4. Plaintiff may sue on bail bond, if sufficient; if not sufficient, bond shall stand as security to the sheriff, who shall have the rights of bail; time of excepting to bail; objections to bail, how decided.
5. Defendant may surrender himself; how, if in term time; how, if in vacation; how bail discharged; when defendant may be discharged

SECTION

- from custody; plaintiff may nevertheless have execution.
6. Defendant in custody may be discharged by giving other bail, which officer may take.
7. Bail may arrest and secure principal, and surrender him.
8. No suit to be commenced on bail bond, until a return that the defendant can not be found; what necessary to charge bail.
9. Bail having paid debt of principal, may recover; how to proceed.
10. Bail may plead death of principal in bar of action on bond; when he shall pay costs.
11. If principal be arrested and conveyed in custody out of State, &c., bail not to be liable.
12. When principal is discharged as an insolvent debtor, bail not liable; *proviso*.
13. Bail not to be proceeded against by *scire facias*.

SECTION 1. No person shall be permitted to be special bail in any action, unless he be a householder and resident within this State, and of sufficient property, if the writ or process is sued out of the supreme court, or if it issue out of any circuit court, unless he be a householder of sufficient property, and resident in the county in which the court is held; and no counsellor or attorney at law, sheriff, under sheriff, bailiff, or other person concerned in the execution of process, shall be permitted to be special bail in any action.

SEC. 2. In all actions to be commenced in any court of record in this State, and founded upon any specialty, bill or note in writing, or on the judgment of any court,

foreign or domestic, and in all actions of covenant and account, and actions on verbal contracts or assumpsits in law, in which the plaintiff or other credible person can ascertain the sum due, or damages sustained, and that the same will be in danger of being lost, or that the benefit of whatever judgment may be obtained, will be in danger, unless the defendant or defendants be held to bail; and shall make affidavit thereof before the clerk of the court from which process issues, or a justice of the peace of this State; or if the plaintiff reside out of this State, before any judge of a court of record, or notary public, or officer of the State or Kingdom in which he resides, or may be duly authorized to administer an oath; and such affidavit shall be delivered to such clerk, who shall issue a *capias* and indorse thereon an order or direction to the sheriff or officer to whom such process shall be directed, to hold the defendant or defendants to bail, in the sum so specified in such affidavit; and it shall be the duty of the sheriff or officer serving such process to take bail accordingly. In actions sounding merely in damages, where the same can not be ascertained as aforesaid, the affidavit shall also set forth the nature and cause of the action, with the substantial or chief facts in relation thereto; if, upon examination thereof, the clerk shall be satisfied that sufficient cause is shown to require bail, he shall issue a *capias* in like manner, and make an order thereon, specifying in what amount the defendant or defendants shall be required to give bail; the officer serving the process shall, in like manner, take bail. The bail taken, as herein directed, may be discharged, or the amount thereof reduced by the court to which the writ is returned, on application during the term to which it is returned, upon satisfactory proof.

SEC. 3. Where any writ shall have been issued from any court of record in this State, whereon bail is required, the sheriff or other officer to whom the same may be directed, shall take a bail bond to himself, with sufficient security, in a penalty of double the sum for which bail is required. And for the purpose of avoiding errors in the taking thereof, the condition shall be substantially in the following form:

“The condition of this obligation is such, that whereas, A. B. has lately sued out of the circuit court of the county of a certain writ of *capias ad respondendum*, in a certain plea of against C. D. returnable to the next term of the said court, to be holden at on the day of next: Now, if the said C. D. shall be and appear at the said court, to be holden at on the said day of next; and in case the said E. F. shall not be received as bail in the said action, shall put in good and sufficient bail, which shall be received by the plaintiff, or shall be adjudged sufficient by the court, or the said E. F. being accepted as bail, shall pay and satisfy the costs and condemnation money, which may be rendered against the said C. D. in the plea aforesaid, or surrender the body of the said C. D. in execution, in case the said C. D. shall not pay and satisfy the said costs and condemnation money, or surrender himself in execution, when, by law, such surrender is required, then this obligation to be void; otherwise to remain in full force and effect.” Which bond, so taken, shall be returned with the writ, on or before the first day of the term of the court to which the writ is returnable. In case the sheriff or other officer executing such process, and to whom it shall be directed, shall neglect to take such bond, or the bail be held insufficient, on exception taken and entered of record during the term to which such writ shall be made returnable, the sheriff or other officer having reasonable notice of taking such exception shall, in either case, be deemed and stand as special bail in the action; and the plaintiff may proceed to judgment against such sheriff or other officer, as in other cases against special bail.

SEC. 4. All bail taken according to the directions of this chapter, shall be deemed and taken as special bail, and may be proceeded against by an action of debt, in the name of the plaintiff in the original action, as in the case of a recognizance of bail, except where the bail shall be adjudged insufficient by the court; then the bond shall in that case stand as a security to the sheriff, who may, upon a forfeiture of the condition to appear and perfect bail, proceed thereon in an action of debt or covenant, to recover the amount of whatever damages he may have sustained by reason of the non-performance of such condition; and shall also have the same right to arrest and detain the principal in custody, in case the bail shall be adjudged insufficient by the court, and the principal shall not perfect bail within the time required by law, as the bail might have had; if he shall elect to arrest and commit the principal to prison, then his remedy on the bond shall cease, and the bond be void. The sufficiency of the bail shall be excepted to, during the term to which the writ is returnable, otherwise the same shall be considered as accepted by the plaintiff. Objections to the sufficiency of bail shall be decided by the court in which the exception is taken, without delay, on such evidence as may be produced, and as it may deem satisfactory; the burthen of proof shall lie on the party affirming the sufficiency, allowing the bail to be examined on oath or affirmation, touching his sufficiency.

SEC. 5. It shall be lawful for the defendant in any action in any court of record, when bail shall have been given as aforesaid, to surrender himself, or for his bail to surrender him at any time before the return day of the process, which may have been sued out against him as bail, to the court in which the suit may be pending, during the sitting thereof, or in vacation, to the sheriff of the county in which process was served. In case the surrender shall be made during the sitting of the court, an entry shall be made on the records of the court, stating the surrender and commitment of the defendant to the custody of the sheriff: if the surrender be made in vacation, the bail or principal shall obtain a certified copy of the bail bond from the sheriff or clerk of the court, in whosoever possession the same may be, and shall deliver himself, or be delivered by his bail to such sheriff, who shall thereupon indorse on such copy of the bail bond, an acknowledgment of the surrender of the body of the defendant to his custody, and thereupon the said copy of the bond with such acknowledgment shall be filed in the office of the clerk of the court in which the action is pending. Upon giving notice of the surrender, whether made in term time or vacation, to the plaintiff or his attorney, and paying the costs of the action against the bail, if any have accrued, the bail shall be discharged from all liability; the defendant shall be committed to the jail of the county, there to remain until discharged by due course of law. If the surrender be after judgment, and the plaintiff shall not charge the defendant in execution within fifteen days after notice thereof, he shall be discharged out of custody; the plaintiff may, notwithstanding such discharge, have execution against the real and personal estate of the defendant.

SEC. 6. Any defendant surrendered into custody or committed by his bail, in manner aforesaid, may at any time before final judgment shall have been rendered in the action, discharge himself from custody by giving other good and sufficient special bail; the sheriff or other officer authorized to take bail, shall take new bail to the same effect as is herein before provided.

SEC. 7. In all cases of bail under this chapter, it shall and may be lawful for the bail to arrest and secure the body of the principal, until a surrender can be made to the sheriff of the county where the suit may be pending, or to the court to which the process was returnable.

SEC. 8. Hereafter, no suit shall be commenced upon any bail bond or recognizance of bail, in any civil action, until a writ of *capias ad satisfaciendum*, shall have issued against the defendant in the original action, directed to the sheriff of the county in which such defendant was arrested, and such sheriff shall have returned that the said defendant was not found in his county; if any action shall hereafter be commenced upon such bond or recognizance, and it shall not appear upon the trial thereof that a writ of *capias ad satisfaciendum* was issued and returned in the manner herein before mentioned, a verdict shall be found for the defendant. It shall be also necessary to charge the bail, that such writ of *capias ad satisfaciendum* should be issued and delivered, at least ten days before the return day thereof, to the sheriff of the county, or officer to whom it may be directed; such sheriff or other officer shall endeavor to serve such writ upon the defendant, any directions which he may receive from the plaintiff or his attorney, to the contrary notwithstanding.

SEC. 9. In all cases where judgment shall hereafter be entered up in any court of record in this State, against any person or persons as bail for another, and the amount of such judgment or any part thereof, has been paid, or discharged by such bail, his, her or their executors, administrators or heirs, it shall and may be lawful for such bail, his, her or their heirs, executors or administrators to obtain judgment by motion against the person or persons for whom he, she or they were bound for the full amount of what shall have been paid by the said bail, his, her or their heirs, executors or administrators, in such court where judgment shall have been entered up against such bail, before judgment shall be entered up against the principal, ten days previous notice of such motion shall have been given to him, if a resident of this State, and if a non-resident, then notice of such motion, shall have been published, for four weeks successively, in some newspaper printed in this State.

SEC. 10. In all actions against bail, it shall be lawful for the bail to plead in bar of such actions, the death of the principal before the return day of the process against the bail; if on the trial of any such issue, the death of the principal be found to have happened before such return day, judgment shall be given in favor of the defendant; he shall notwithstanding, be liable to judgment and execution for the costs of suit, unless such death shall be found to have taken place before the commencement of the action.

SEC. 11. If any defendant having given special bail in any action, shall afterwards be legally arrested and delivered over to the executive authority of the United States, or of any State or territory thereof, upon a charge of having committed a crime out of the jurisdiction of this State, and shall be thereupon carried beyond the limits thereof, such bail shall be discharged from all liability incurred as bail, if the defendant has not returned to this State discharged from such arrest, before he shall be liable to be charged as bail for such defendant.

SEC. 12. When any defendant in any civil action, shall have been discharged as an insolvent debtor, agreeably to the laws of this State respecting insolvent debtors, and a certificate from the authority lawfully granting the same, shall be produced to the court, the bail of such defendant, shall in all cases, be entitled to have an *exoneretur* entered upon the records of the court, which shall thereupon operate as a discharge from his bond or recognizance, in the same manner as if he had surrendered his principal in court, or to the sheriff as herein before directed: *Provided*, That judgment shall not have been recovered against him as the bail of such defendant.

SEC. 13. Hereafter, proceedings by *scire facias*, against bail, in civil cases, shall not be allowed in any court of record in this State.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Act No. 2.]

CHAPTER XV. BANK NOTES.

SECTION

1. Five dollars fine, for passing bank notes of other States, of less denomination than five dollars.
2. Obligations given for loan of such notes, void; fact to be pleaded in bar.

SECTION

3. Notes of joint stock companies void, and persons passing them punished as swindlers.

SECTION 1. No person or persons shall be permitted to utter or pass in this State, as or in lieu of money, any bank bill or note, made or issued by any banking institution, or purporting to have been made or issued by any banking institution, of a less denomination, or for a less sum than five dollars; and each and every person or persons offending herein, shall forfeit and pay the sum of five dollars for every offence; which may be recovered, with costs of suit, by action of debt or assumpsit before any justice of the peace, by any person who will sue for the same: *Provided*, The provisions of this chapter shall not apply to the uttering or passing of any bank bill or note issued by any banking institution in this State authorized by its charter to make, utter or issue, bills or notes of a less denomination than five dollars.

SEC. 2. Any person or persons who shall use or lend any bill or note of any bank within the provisions of the first section of this chapter, for a less denomination than five dollars, and who shall take obligations in writing, or verbal promise, for the re-payment thereof, of any note or bill of the character and description aforesaid, loaned as aforesaid, shall not be permitted to collect the same; and it shall be competent for the defendant, in any suit brought for the collection thereof, to plead that the obligation in writing, or verbal promise, was made and executed or given for and in consideration of notes and bills of a less denomination than five dollars, made, uttered, and issued by incorporated companies, or by banking institutions, other than those excepted in the proviso to the first section of this chapter, which plea, when so made, shall be deemed good in law; and the plea so pleaded shall be deemed a bar to the action.

SEC. 3. If any person or persons shall utter or pass, as or in lieu of money, any note or bill issued and published by any joint stock or other company not incorporated, or purporting to have been so issued or published, such person or persons shall not be permitted to collect any demands arising therefrom; and the plea allowed in the second section of this chapter shall be taken and allowed a good and sufficient plea, in bar of any such demand; and such person or persons so uttering or passing notes or bills issued and published as aforesaid, shall be deemed and considered swindlers, and shall be liable to indictment as such: and, upon conviction, shall be fined, in any sum not less than one hundred dollars, nor more than one thousand dollars for each offence.

APPROVED: March 3, 1845.

CHAPTER XVI.

BASTARDY.

SECTION

1. When complaint is made by mother of bastard child, justice shall cause father to be brought before him, examined, and bound to appear at next circuit court. On refusal to give bond, may be committed.
2. Court shall try the cause.
3. Cause continued in certain cases.
4. Mother may be a witness, if otherwise competent.
5. If issue be found against defendant, he shall be adjudged to support child; payments, how made,

SECTION

- and to whom; punishment for refusal; father may take charge of child after it is three years of age; if child die, bond to be void; when money paid to guardian.
6. If issue be found for defendant, mother of child to pay the costs.
 7. If parents intermarry, child to be deemed legitimate, and bond void.
 8. Prosecution barred after two years, except in case of absence from the State.

SECTION 1. When any unmarried woman, who shall be pregnant or delivered of a child, which by law would be deemed a bastard, shall make complaint to any one or more of the justices of the peace of the county where she may be so pregnant or delivered, and shall accuse, under oath or affirmation, any person with being the father of such child, it shall be the duty of such justice or justices to issue a warrant, directed to the sheriff or any constable of such county, against the person so accused, and cause him to be brought forthwith before him or them. Upon his appearance, it shall be the duty of said justice or justices, to examine the said woman, upon oath or affirmation, in the presence of the man alleged to be the father of the child, touching the charge against him. If the said justice or justices shall be of opinion that sufficient cause appears, it shall be his or their duty to bind the person so accused, in bond, with sufficient and good security, to appear at the next circuit court to be holden for said county, to answer to such charge; to which such court said warrant and bond shall be returned. On neglect or refusal to give such bond and security, the justice or justices shall cause such person to be committed to the jail of the county, there to be held to answer such complaint.

SEC. 2. The circuit court of such county, at their said next term, shall have full cognizance and jurisdiction of the said charge of bastardy, and shall cause an issue to be made up, whether the person charged as aforesaid, is the real father of the child or not, which issue shall be tried by a jury. Such inquiry shall not be *ex parte*, when the person charged shall appear and deny the charge; but he shall have a right to appear and defend himself by counsel, and controvert, by all legal evidence, the truth of such charge.

SEC. 3. If at the time of such court, the woman be not delivered, or be unable to attend, the court shall order a recognizance to be taken of the person charged as aforesaid, in such an amount, and with such sureties as the court may deem just for the appearance of such person at the next court, after the birth of her child; and should such mother not be able to attend at the next term after the birth of her child, the recognizance shall be continued until she is able.

SEC. 4. On the trial of every issue of bastardy, the mother shall be admitted as a competent witness, and her credibility shall be left to the jury. She shall not be

admitted as a witness, in case she has been duly convicted of any crime, which would by law disqualify her from being a witness in another case.

SEC. 5. In case the issue be found against the defendant, or reputed father, or whenever he shall, in open court, have confessed the truth of the accusation against him, he shall be condemned by the judgment of the said court, to pay such sum of money, not exceeding fifty dollars, yearly, for seven years, as in the discretion of the said court may seem just and necessary for the support, maintenance, and education of such child; and shall, moreover, be adjudged to pay all the costs of the prosecution, for which execution shall issue as in other cases of costs. The said defendant, or reputed father, shall give bond and security for the due and faithful payment of such sum of money, as shall be ordered to be paid by the said court, to be paid by him for the period aforesaid; which shall be made payable quarterly to the judge of the court of probate, and his successor in office, for the county in which the prosecution aforesaid was commenced; and the same, when received, shall be laid out and appropriated, from time to time, by the said judge, under his order and direction, for the purposes aforesaid; in case the defendant or reputed father shall refuse or neglect to give such security as may be ordered by the court, he shall be committed to the jail of the county, there to remain until he shall comply with such order, or until otherwise discharged by due course of law: *Provided, always,* That the said reputed father, after giving bond with approved security, to the court of probate in said county, conditioned for the suitable maintenance of any such child, for the term aforesaid, shall be permitted to take charge and have the control of his said child at any time after said child shall arrive at the age of three years; and from the time of the said father taking charge of such child, or should the mother refuse to surrender the said child, when so demanded by the said father, then and from thenceforth the said father shall be released and discharged from the payment of all such sum or sums of money as may thereafter become due against the said father, for the support, maintenance and education of any such child. If the said child should never be born alive, or being born alive, should die at any time, and the fact shall be suggested upon the record of the said court, then the bond aforesaid shall from thenceforth be void. But when a guardian shall be appointed for such bastard, the money arising from such bond shall be paid over to such guardian.

SEC. 6. If upon the trial of the issue aforesaid, the jury shall find that the child is not the child of the defendant, or pretended father, then the judgment of the court shall be that he be discharged. The woman making the complaint shall pay the costs of the prosecution, and judgment shall be entered therefor, and execution may thereupon issue.

SEC. 7. If the mother of any bastard child, and the reputed father, shall at any time after its birth, intermarry, the said child shall, in all respects, be deemed and held legitimate, and the bond aforesaid be void.

SEC. 8. No prosecution under this chapter shall be brought after two years from the birth of the bastard child: *Provided,* The time any person accused shall be absent from the State, shall not be computed.

APPROVED: March 3, 1845.

CHAPTER XVII.

BIRTHS AND DEATHS.

SECTION

1. County commissioners' clerk to record births and deaths in a book.
2. Father, mother, or another may file affidavit of birth of child.
3. Who may make affidavit of death; in what time; contents of affidavit; if inquest be held by coroner, he shall make report.

SECTION

4. Clerk shall file affidavit, and make entry; form of entry of birth; of death.
5. Clerk shall keep alphabetical index; shall on request, give certificate; which shall be *prima facie* evidence.
6. Fees of clerk in such cases.
7. Persons swearing falsely to be deemed guilty of perjury, and punished accordingly.

SECTION 1. It shall be the duty of the clerk of the county commissioners' court, in each county of this State, to provide himself with a well bound book, wherein he shall record the births and deaths of all persons coming to his knowledge, in the manner hereinafter provided.

SEC. 2. The father of a child or children, or mother of any child or children, in case the father be dead, out of the State or otherwise prevented, or in case of an illegitimate child or children, may appear before the clerk of the county commissioners' court of his or her respective county, and make an affidavit in writing before such clerk, setting forth the birth or births of his or her child or children, stating therein the day and year when, and the justice's precinct wherein such birth or births happened, and the christian and surname of said child or children. In case such father or mother fail or neglect to make an affidavit as aforesaid within sixty days after such birth or births, any householder may make the same concerning every birth happening in his house.

SEC. 3. The eldest person next of kin may make affidavit before the clerk aforesaid, of his or her respective county, of the death of his or her kindred, and in case the next of kin neglects to make such an affidavit for the space of twenty days, the administrator or executor of such deceased person may make such affidavit as aforesaid; and any householder may make the like affidavit before said clerk concerning any death happening in his house. Affidavits made under the provisions of this section shall state the name and the age of the person deceased, according to the best of his or her knowledge and belief, and shall also state the justice's precinct where such death happened. If any person shall come to his death, and a coroner's inquest be held over his or her body, or if any person die while confined in any penitentiary, jail, workhouse, poorhouse, or hospital within this State, the respective wardens, jailers, or keepers of such workhouses, poorhouses or hospitals, shall make out a certificate containing substantially the same statements concerning the name, age, death and place of death, required in the affidavit last aforesaid, and within ten days after such death happened, file the same with the county commissioners' clerk of the proper county.

SEC. 4. The said county commissioners' clerk shall carefully file and number such affidavits and certificates in the order they are presented, which shall be parts of the records of his office, and said clerk shall make an abstract of the material

facts set forth in said affidavit or certificate and enter the same in the said record of births and deaths; which abstract shall be in substance as follows:

Entry concerning the birth of a person.

On the day of A. D. , A. B., (being the father or mother; or a householder as the case may be) made proof of the birth of C. D., which took place on the day of , A. D. , in precinct, county of ; see affidavit on file, No. .

Entry of death.

On the day of , A. D. , A. B. of county (being the eldest person next of kin, or a householder in whose house the death happened, executor or administrator of deceased, coroner or keeper of a jail, poorhouse, workhouse or hospital, as the case may be) made proof of the death of C. D. aged years, which took place the day of A. D. in precinct, county; see affidavit (or certificate) on file No. .

SEC. 5. The clerk shall keep a correct alphabetical index to said record, showing the christian names and surnames of the persons concerning whom entries have been made; said index distinguishing between cases of births and deaths, and shall upon request of any person, make out a certificate of said entry, under his hand and the seal of the county commissioners' court; and such certificate shall be received as *prima facie* evidence of the facts stated therein in all courts of law and equity in this State.

SEC. 6. For every affidavit taken under this chapter, the said clerk shall be entitled to a fee of twelve and a half cents; for making the entry and filing certificates, to a fee of twelve and a half cents; and for making out a certificate under seal as aforesaid, to a fee of fifty cents: *Provided*, He shall not be entitled to any fee in case where one of the above enumerated officers files a certificate of the death of any person under his charge.

SEC. 7. Any person having sworn or made affirmation to any of the affidavits above mentioned, who shall swear or affirm wilfully, corruptly and falsely, in a material point therein set forth, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury, and shall be, upon conviction thereof, punished accordingly.

APPROVED: March 3, 1845.

CHAPTER XVIII.

CASTOR BEANS.

SECTION

1. Persons cultivating castor beans to secure the same by sufficient enclosure.
2. Violations of this chapter, punished by fine; how

SECTION

collected, and applied; damages may be recovered.

SECTION 1. No person or persons shall hereafter be permitted to plant and cultivate castor beans, without securing the same with as good and sufficient a fence

or fences as is generally put up, and used, for the protection of grain crops in the neighborhood.

SEC. 2. All persons violating this chapter shall be fined in the sum of twenty-five dollars, to be sued for and recovered, by any person, before any justice of the peace, within the proper county, in an action of debt; the one-half whereof shall go to the person so suing, the other half into the treasury of the county where such penalty is recovered. Nothing herein contained shall in any wise prejudice the owner or owners of animals which may be injured by the negligence of any of the persons aforesaid, from recovering adequate damages for such injury.

APPROVED: March 3, 1845.

CHAPTER XIX.

CENSUS.

SECTION

1. Census taken every five years.
2. To be taken by commissioners, appointed by county courts.
3. Census of unorganized county taken by commissioner of county to which it is attached.
4. Commissioner to take oath of office; form of oath.
5. When commissioner shall commence taking census; what facts he shall ascertain and set down.
6. Of whom enquiry to be made.
7. Commissioners shall, by first day of October, transmit returns to secretary of State, and to county court; shall report number of militia to adjutant general.

SECTION

8. Penalty for neglect; how recovered; judges to give this law in charge to grand juries.
9. Who shall be returned as members of families, &c.
10. Heads of families and others to render account; penalty for refusing.
11. Compensation of commissioners; how paid.
12. Secretary of State shall receive and file returns, and report same to Speaker of House at next session; adjutant general report number of militia to the Secretary at War of the United States.

SECTION 1. An enumeration of the inhabitants of this State shall be taken on the first day of July, one thousand eight hundred and forty-five, and at the end of every five years thereafter.

SEC. 2. The enumeration shall be taken by commissioners, to be appointed by the county commissioners' courts of the respective counties.

SEC. 3. The enumeration of the inhabitants of any unorganized county shall be taken by the commissioner of the county to which such unorganized county is attached; the table of enumerations in such counties to be kept distinct from each other.

SEC. 4. Before entering upon their duties, each of such commissioners shall file in the office of the county commissioners' clerk of his county, in substance the following oath: "I, A. B., do solemnly swear, that I will make a just and perfect enumeration and description of all persons resident within the county of C., (and the county of D., thereto attached, when such is the fact,) and perform all other duties required of me by law, according to the best of my knowledge and abilities."

SEC. 5. Each commissioner shall commence taking such enumeration on the first day of July in each year in which such enumeration is required to be taken, and shall ascertain and set down in a book to be kept for that purpose, in a convenient tabular

form, the following facts: The number each, of white males and females of ten years of age and under; over ten and not over twenty; over twenty and not over thirty; over thirty and not over forty; over forty and not over fifty; over fifty and not over sixty; over sixty and not over seventy; over seventy and not over eighty; over eighty and not over ninety; over ninety and not over one hundred; over one hundred: Also, the number of white male persons between the ages of eighteen and forty-five years, subject to military duty: Also, each, of free male and female persons of color, of all ages; of indentured or registered servants and their children; of French negroes and mulattoes held in bondage: Also, the number of manufactories of every kind, and the annual product of each kind; the number and annual product of coal mines; the value of live stock; value of grains produced; value of all other agricultural products; the number of pounds of wool; number of mills and distilleries; the number of universities or colleges; academies and grammar schools, and common schools, with the number of pupils in each.

SEC. 6. The said enumeration shall be made by an actual inquiry at each dwelling house, or from the head of each family, when the same can be conveniently done, or otherwise from the best information that can be obtained, where there shall be no fixed place of residence, or the head of such family, or other person to be included in such enumeration, shall be absent from the county or State.

SEC. 7. Each of said commissioners shall, on or before the first day of October, of each year in which the enumeration is required to be taken, transmit to the secretary of State, and to the commissioners' court of his county, his return, by him duly certified as correct, full and true, so far as he has been able to ascertain. He shall also transmit to the adjutant general of the State a certified statement of the number of persons subject to military duty. Such commissioner in his report shall at the foot of each column, list or class, give the total number or amount, and shall give the aggregate number of all the inhabitants of the State.

SEC. 8. Each commissioner failing or neglecting to make proper returns, as aforesaid, or making a false return of the enumeration to the clerk of the county commissioners' court of the county, to the secretary of State, and adjutant general, within the time limited by this chapter, shall forfeit the sum of three hundred dollars, recoverable in the circuit court of the county where such offence shall have been committed, by action of debt, information or indictment; the one-half thereof to the use of the informer, and the other half to the county. And for the more effectual discovery of said offences, the judges of the several circuit courts, in this State, at their next term to be held after the expiration of the time allowed for making the returns of the enumeration hereby directed, shall give this chapter in charge to the grand juries of their respective counties, and shall cause the returns of the commissioner to be laid before them, for their inspection.

SEC. 9. Each person, whose usual place of abode shall be in any family, on the said first Monday in July, in the year of our Lord, one thousand eight hundred and forty-five, and on the first Monday in July, every fifth year thereafter, shall be returned with the members of such family; and the name of every person who shall be an inhabitant of any county, or the attached part thereof, without any fixed place of residence, shall be inserted in the county in which he or she, shall be on the said first Monday in July; and every resident person who shall be absent from the county or State, at the time of taking any such enumeration, shall be set down as belonging to the place where he or she, usually resides in this State.

SEC. 10. Each free person, over the age of sixteen years, whether heads of families or not, belonging to any family within any county, made or established in

this State, shall be and hereby is obliged to render to the commissioner appointed in said county, if required, a true account, to the best of his or her knowledge, of every person belonging to such family, respectively, according to the several descriptions aforesaid, on pain of forfeiting twenty dollars, to be sued for and recovered, by action of debt, by such commissioner, for the use of the proper county: *Provided*, That in all cases where any such fine shall be assessed against any minor or minors, the same shall be paid by his, her or their parent or guardian; and in case of his or her refusal to pay the same, an attachment may be issued to enforce the payment thereof.

SEC. 11. Each of said commissioners shall receive at the rate of two dollars for every hundred persons returned, for the first two thousand; at the rate of one dollar and seventy-five cents for each hundred persons returned, over two and not exceeding three thousand; at the rate of one dollar and fifty cents for the fourth thousand; at the rate of one dollar and twenty-five cents for the fifth thousand; and at the rate of one dollar for each hundred over and above five thousand; to be paid out of the State treasury, out of any moneys not otherwise appropriated.

SEC. 12. The secretary of State shall receive and file such returns in his office, and return the same to the speaker of the House of Representatives, on or before the second day of the next session after such enumeration is made; and the adjutant general shall file the returns to be made to him of the number of persons subject to militia duty, as aforesaid, in his office; and shall immediately thereafter make out a statement of the whole number of such persons, and report the same to the secretary at war of the United States.

APPROVED: March 3, 1845.

CHAPTER XX.

CHATTEL MORTGAGES.

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| <p>SECTION</p> <ol style="list-style-type: none"> 1. Chattel mortgage not valid, unless acknowledged and recorded, and possession by mortgages. 2. Acknowledgment, form of; justice's memorandum; his fee. 3. Mortgage when recorded and <i>bona fide</i>, good for two years; <i>proviso</i> as to possession. | <p>SECTION</p> <ol style="list-style-type: none"> 4. Copy of mortgage on record to be proof, if original be lost. 5. Fee of recorder. 6. If mortgagor sell mortgaged property, how punished. 7. Provisions to extend to all conveyances operating as chattel mortgages. |
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SECTION 1. No mortgage on personal property shall be valid as against the rights and interests of any third person or persons, unless possession of such personal property shall be delivered to, and remain with the mortgagee, or the said mortgage be acknowledged and recorded, as hereinafter directed.

SEC. 2. Any mortgagor of personal property, may acknowledge such mortgage before any justice of the peace in the justice's district in which he may reside; and said justice shall certify the same in substance as follows: "This mortgage was acknowledged before me, by A. B., (the mortgagor,) this day of 18;" and the said justice shall also keep on his docket a memorandum of the same, in

substance as follows, viz : "A. B. to C. D., mortgage of (here describe the property,) acknowledged this day of 18 ,” inserting the name of the mortgagor in place of A. B., and the name of the mortgagee in place of C. D., and the justice may receive therefor a fee of twenty-five cents.

SEC. 3. Any mortgage of personal property, so certified, shall be admitted to record by the recorder of the county in which the mortgagor shall reside at the time when the same is made, acknowledged and recorded; and shall thereupon, if *bona fide*, be good and valid from the time it is so recorded, for a space of time not exceeding two years, notwithstanding the property mortgaged or conveyed by deed of trust, may be left in possession of the mortgagor: *Provided*, That such conveyance shall provide for the possession of the property so to remain with the mortgagor.

SEC. 4. A copy of any such mortgage made, acknowledged and recorded as aforesaid, certified by the proper recorder from the proper record, may be read in evidence in any court of this State, without any further proof of the execution of its original, if said original be lost or out of the power of the person wishing to use it.

SEC. 5. For recording any such mortgage, the recorder recording the same, shall receive eight cents for every one hundred words, and for copies thereof, the same compensation only.

SEC. 6. Any person having conveyed any article of personal property to another by mortgage, who shall, during the existence of the lien or title created by such mortgage, sell the said personal property to a third person, for a valuable consideration, without informing him of the existence and effect of such mortgage, shall forfeit and pay to such purchaser, twice the value of such property so sold; which forfeiture may be recovered in an action of debt in any court having jurisdiction thereof, or if the amount claimed does not exceed one hundred dollars, before any justice of the peace.

SEC. 7. The provisions of this chapter shall be deemed to extend to all such bills of sale, deeds of trust and other conveyances of personal property as shall have the effect of a mortgage or lien upon such property.

APPROVED: March 3, 1845.

CHAPTER XXI.

CHANCERY:

SECTION

1. Circuit courts have chancery jurisdiction; may make rules of practice.
2. Suits commenced by bill; in what county; when defendants are non-residents; in case of bills for injunctions.
3. Set-off allowed in certain cases.
4. Infants may sue by guardian, &c.
5. Summons to issue on filing bill; how served when defendants reside in different counties.
6. Summons, how tested, sealed, signed, dated and when returnable.
7. Service of summons to be by delivery or leaving copy ten days before returnable.

SECTION

8. If defendant be non-resident, service may be made by publication, in newspaper; contents of notice; to be inserted four weeks; first publication sixty days before return; diligence required of sheriff, notwithstanding publication.
9. If no service nor timely publication be made, cause continued; but if otherwise, and no defence made, bill may be taken for confessed.
10. If cause be continued, same proceedings had.
11. If return be made without service, *alias*, *pluries*, &c., to issue without order.

SECTION

12. Defendants out of this State, may be served by copy of bill thirty days before return.
13. When bill is taken for confessed, court may make and enforce decree; how enforced.
14. Decree for money a lien on real estate.
15. Parties not served or notified, or their heirs, &c., may petition to be heard; re-hearing; such parties barred after three years.
16. If defendant be brought into court for contempt, solicitor to be appointed by court, and cause may proceed.
17. Courts may establish rules of proceeding.
18. Rule respecting time for pleading, answering, &c.
19. If bill is taken for confessed, plaintiff may be required to produce proof.
20. Answer to be on oath, by whom oath may be administered and authenticated.
21. When bill is not for discovery only, oath may be waived.
22. If answer be insufficient, defendant may be ruled to file additional answer, and punished for refusal.
23. Answer to be full.
24. Defendant may file cross bill, which plaintiff must answer.
25. Plaintiff to answer cross bill as if original; effect of his answer.
26. If plaintiff do not answer cross bill, his bill may be dismissed, or decree entered against him.
27. How defendant may bring in new parties by his filing cross bill.
28. Bill not to be dismissed without consent, after filing cross bill.
29. Plaintiff need not answer cross bill until defendant has answered his original bill.
30. Exceptions to testimony, how filed, argued and disposed of.
31. Replications to be general; when filed.
32. Cause when at issue; when answer taken as true.
33. Disclosures made in answer, not conclusive, but may be rebutted.

SECTION

34. Court may grant time, &c.
35. May direct issues to be tried by a jury.
36. If execution be returned unsatisfied, bill of discovery may be filed in aid of suit at law.
37. Power of court to compel discovery; to prevent transfers; answers not to be read in evidence on trial of defendant for the fraud charged in the bill.
38. If one of several complainants or defendants die, cause may proceed against survivors.
39. When party dies and his interest vests in others, they may be made parties; in what manner and to what extent they may be bound.
40. When parties die, suit not to abate, but may be revived by legal representatives.
41. How unknown parties may be notified; publication.
42. How such unknown persons affected by decree.
43. When party neglects to comply with order of court to make deed, court may appoint a commissioner to execute the same, with like effect.
44. Court may prescribe terms of sale.
45. Decrees respecting real estate shall be a lien thereon; extent of lien in other cases.
46. When there is no officer to execute decree, sheriff may execute same; remedy against sheriff for neglect, and against parties for not complying with order.
47. Court may appoint guardian *ad litem* for infant or insane defendant; guardian not liable for costs; his compensation.
48. Courts may appoint masters in chancery; their term of office.
49. Masters to file with clerk a bond, and oath of office.
50. Powers of masters in chancery.
51. When there is no master, or he be disqualified from acting, court may appoint substitute.
52. Fees of masters in chancery.
53. Property exempt from execution, not liable herein.

SECTION 1. The several circuit courts of this State, in all causes of which they may have jurisdiction as courts of chancery, shall have power to proceed therein according to the mode hereinafter prescribed; and where no provision is made by this chapter, according to the general usage and practice of courts of equity, or agreeably to such rules as may be established by the said courts in that behalf.

SEC. 2. The mode of commencing suits in equity, shall be by filing a bill, setting forth the nature of the complaint, with the clerk of the circuit court of the county, within whose jurisdiction the defendants, or the major part of them, if inhabitants of this State, reside; or if the suit may affect real estate in the county where the same or greater part thereof shall be situated: If the defendants are all non-residents, then with the clerk of the circuit court of any county. Bills for injunctions to stay proceedings at law, shall be filed in the office of the circuit court of the county in which the record of the proceedings had, shall be.

SEC. 3. In suits for the payment or recovery of money, set-offs shall be allowed in the same manner, and with the like effect, as in actions at law.

SEC. 4. Suits in chancery may be commenced and prosecuted by infants, either by guardian or next friend.

SEC. 5. Upon the filing of every bill as aforesaid, the clerk of the court aforesaid shall thereupon issue a summons directed to the sheriff of the county in which the defendant resides, if the defendant be a resident of this State, requiring him to appear, and answer the bill on the return day of the summons; and where there

are several defendants residing in different counties, a separate summons shall be issued to each county, including all the defendants residing therein.

SEC. 6. Every summons shall be tested in the name of the clerk of the court out of which it may issue; shall bear the seal of the court and the signature of its clerk; shall be dated of the day it issues, and be made returnable to the next term of the court, after the date thereof, unless the suit be brought within ten days immediately preceding any term, in which case the summons shall be returnable to the next term thereafter.

SEC. 7. Service of summons shall be made by delivering a copy thereof to the defendant, or leaving such copy at his usual place of abode, with some white person of the family, of the age of ten years or upwards, and informing such person of the contents thereof, which service shall be at least ten days before the return day of such summons.

SEC. 8. Whenever any complainant shall file in the office of the clerk of the court in which his suit is pending, an affidavit showing that any defendant resides or hath gone out of this State, or on due inquiry can not be found, or is concealed within this State, so that process can not be served upon him, the clerk shall cause publication to be made in some newspaper printed in his county, and if there be no newspaper published in his county, then in a newspaper published in this State, containing notice of the pendency of such suit, the names of the parties thereto, the title of the court, and the time and place of the return of summons in the case; such publication to be made for four successive weeks, the first of which shall be at least sixty days before the return day of such summons. But this proceeding shall not dispense with the usual exertion on the part of the sheriff, to serve the summons.

SEC. 9. If sixty days shall not intervene between filing such affidavit and the return day of the summons, and the summons shall not be served, the cause shall be continued to the next term. If sixty days shall intervene, as aforesaid, or if service of process shall be made, and the defendant shall not appear on the return day of the summons, the bill may be taken for confessed.

SEC. 10. If, for want of due publication or service, the cause shall be continued, then the same proceedings shall be had at the succeeding term of the court, as may have been had at the term to which said summons shall be returnable.

SEC. 11. If, in any suit in chancery, the process shall not be returned executed on the return day thereof, the clerk, if required, shall issue an *alias*, *pluries*, or other process, without an order of the court therefor.

SEC. 12. The complainant may cause a copy of the bill or petition, together with a notice of the commencement of the suit, to be delivered to any defendant residing or being without this State, not less than thirty days previous to the commencement of the term at which such defendant is required to appear; which service, when proved to the satisfaction of the court, by the oath or deposition of any person competent to be a witness in the cause, shall be as effectual as if such service had been made in the usual form, within the limits of this State.

SEC. 13. When any bill is taken for confessed, the court may make such decree thereon, as may be just, and may enforce such decree, either by sequestration of real and personal estate, by attachment against the person, by causing possession of real and personal estate to be delivered to the party entitled thereto, or by ordering the demand of the complainant to be paid out of the effects or estate sequestered, or which are included in such decree; and by the exercise of such other powers as pertain to courts of chancery, and which may be necessary for the attainment of justice.

SEC. 14. A decree for money shall be a lien on the lands and tenements of the party against whom it is entered, to the same extent and under the same limitations as a judgment at law.

SEC. 15. When any final decree shall be entered against any defendant who shall not have been summoned or notified to appear as required by this chapter, and such person, his heirs, devisees, executor, administrator or other legal representatives, as the case may require, shall, within one year after notice in writing given him or them of such decree, or within three years after such decree, if no such notice shall have been given as aforesaid, appear in open court and petition to be heard, touching the matter of such decree, and shall pay such costs as the court shall deem reasonable in that behalf, the person so petitioning may appear, and answer the complainant's bill, and thereupon, such proceedings shall be had as if the defendants had appeared in due season, and no decree had been made. The decree shall, after three years from the making thereof, if not set aside in manner aforesaid, be deemed and adjudged confirmed against such non-resident defendant, and all persons claiming under him by virtue of any act done subsequent to the commencement of such suit; and at the end of the said three years, the court may make such further order in the premises as shall be required, and shall be just.

SEC. 16. If the defendant shall be brought into court by virtue of any process, being in contempt for refusing to appear, and shall continue to refuse or neglect to enter his appearance, or appoint a solicitor of the court to do it for him, according to the provisions of this chapter, or the rules of said court, then, and in that case, the court may appoint a solicitor to enter an appearance of such defendant, and such further proceedings may be had in the said cause, as if the party had actually appeared.

SEC. 17. The judges of the circuit courts, in their respective circuits, may establish rules of proceeding in chancery, and make all needful orders and regulations, consistent with the practice of courts of chancery, in cases not provided for by law.

SEC. 18. Every defendant who shall be summoned according to the provisions of this chapter shall file his exceptions, plea, demurrer, or answer to the bill at the time to which the process or summons shall be returnable; if he fail to do so, the bill may be taken for confessed; but for good cause shewn, the court may extend the time for excepting or pleading, and the court may thereupon enter an interlocutory decree, which may be made absolute at the next term, and carried into effect as other final decrees. If the defendant shall appear at the next term and offer to file his answer to the bill, the court may permit him to do so, upon his showing sufficient cause, and paying the costs of the preceding terms; in such case, the decree shall be vacated, and the cause may be proceeded in as in other cases.

SEC. 19. Where a bill is taken for confessed, the court, before a final decree is made, if deemed requisite, may order the complainant to produce documents and witnesses to prove the allegations of his bill, or may examine him on oath or affirmation, touching the facts therein alleged; such decree shall be made in either case as the court shall consider equitable and proper.

SEC. 20. Every answer shall be verified by an oath or affirmation, taken before and certified by a judge or justice of the peace in this State, or the clerk of the court in which the action is pending, or before a judge or justice of the peace or

other person authorized to administer an oath in the State, territory, kingdom or empire, in which the defendant may be, or reside; the official character of such officer, if out of this State, being attested by the seal of some court of record, within such State, territory, kingdom or empire.

SEC. 21. When a bill shall be filed in the court^a of chancery, other than for discovery only, the complainant may waive the necessity of the answer being made on the oath of the defendant; and in such cases, the answer may be made without oath, and shall have no other or greater force as evidence than the bill.

SEC. 22. When an answer shall be adjudged insufficient, the defendant shall file a further answer within such time as the court shall direct, and on failure thereof, the bill shall be taken as confessed; if such further answer shall be likewise adjudged insufficient, the defendant shall file a supplemental answer, and pay all costs attendant thereon; if that shall be adjudged insufficient, the defendant may be proceeded against for a contempt, and the like proceedings be had thereon to enforce the order of the court, as in other cases of contempt.

SEC. 23. Every defendant shall answer fully all the allegations and interrogatories of the complainant, except such as are not required to be answered, by reason of exceptions, plea or demurrer thereto allowed.

SEC. 24. Any defendant may, after filing his answer, exhibit and file his cross bill containing interrogatories to the complainant, and call upon him to file his answer thereto, in such time as may be prescribed by the rules of the court.

SEC. 25. The complainant shall in such case be held to except, plead, demur or answer to such cross bill in the same manner that a defendant is required to except, plead, demur, or answer to an original bill, and his answer shall be evidence in the same manner as the defendant's answer to the bill.

SEC. 26. If the complainant shall fail to answer such interrogatories, his bill or petition shall be dismissed with costs, or the new matter set out in the defendant's cross bill shall be taken as confessed, and a decree entered accordingly.

SEC. 27. Where it is necessary for the defendant to bring a new party before the court, he shall state it in his answer, and insert interrogatories for him in his answer; and a subpoena shall be issued, and other proceedings had, as in the case of other defendants.

SEC. 28. No complainant shall be allowed to dismiss his bill, after a cross bill has been filed, without the consent of the defendant.

SEC. 29. The complainant shall not be compelled to file his answer to any cross bill, until the defendant shall have filed a sufficient answer to the complainant's bill.

SEC. 30. All exceptions to answers to interrogatories exhibited by the defendant as aforesaid, shall be filed within such time as the court may direct, and be argued at such time as the court may appoint. If the complainant's exceptions be overruled, he shall pay costs to the defendant; and if the defendant's answer be adjudged insufficient, he shall pay costs to the complainant.

SEC. 31. Replications shall be general, with the like advantage to all parties as if special; and shall be filed in four days after the answer, if in term time; or if such answer be filed in vacation, the plaintiff or his attorney shall have notice thereof.

SEC. 32. After replication is filed, the cause shall be deemed at issue, and stand for hearing at the next term, or in default of filing such replication, the cause may be set for hearing upon the bill and answer; in which case the answer shall be taken as true, and no evidence shall be received, unless it be matter of record to which the answer refers.

SEC. 33. When the complainant shall require a discovery respecting the matters charged in the bill, the disclosure shall not be deemed conclusive; but if a replication be filed, may be disproved or contradicted, like any other testimony, according to the practice of courts of equity.

SEC. 34. The said circuit courts, when sitting as courts of equity, may extend the time for answering, replying, pleading, demurring, or joining in demurrer; and may permit the parties to amend their bills, petitions, pleas, answers and replications, on such terms as the court may deem proper, so that neither party be surprised nor delayed thereby.

SEC. 35. The said circuit courts may, in their discretion, direct an issue or issues to be tried by a jury, whenever it shall be judged necessary in any cause in equity, pending in any of the said courts. In all other causes in equity, the mode of trial shall be the same as has been heretofore practiced in courts of chancery.

SEC. 36. Whenever an execution shall have been issued against the property of a defendant, on a judgment at law or in equity, and shall have been returned unsatisfied, in whole or in part, the party suing out such execution may file a bill in chancery against such defendant, and any other person, to compel the discovery of any property, or thing in action, belonging to the defendant; and if any property, money or thing in action due to him, or held in trust for him, and to prevent the transfer of any such property, money or thing in action, or the payment or delivery thereof to the defendant, except when such trust has been created by, or the fund so held in trust has proceeded from, some person other than the defendant himself.

SEC. 37. The court shall have power to compel such discovery, and to prevent such transfer, payment or delivery, and to decree satisfaction of the sum remaining due on such judgments, out of any personal property, money, or things in action, belonging to the defendant, or held in trust for him, with the exception above stated, which shall be discovered by the proceedings in chancery, whether the same were originally liable to be taken in execution at law or not: *Provided*, That no answer made to any bill filed under this and the preceding section shall be read in evidence against the defendant on the trial of any indictment for the fraud charged in the bill.

SEC. 38. If in any suit or action now pending, or which shall hereafter be brought in any court of chancery, there are or shall be two or more complainants or defendants, and one or more of them die, (if the cause of such action or suit survive to the surviving complainant or complainants, or against the surviving defendant or defendants,) such suit or action shall not thereby be abated; but such death being suggested and shown to the satisfaction of the court, such suit or action shall proceed at the suit of the surviving complainant or complainants, and against the surviving defendant or defendants.

SEC. 39. When there shall be two or more complainants or defendants, in any suit or action in chancery, as aforesaid, and any of them die, and the cause of action do not survive, but other persons shall become parties in interest, in right, or by the death of such deceased party, such suit or action shall, by reason of such death, be abated only with respect to such deceased party. The surviving complainant or complainants may proceed against the surviving defendant or defendants, without reviving the suit against the representatives of the deceased party, or any other who may become interested by the death of such party; but, in such case, such representatives or other persons becoming interested by the death of such party, shall not be bound by any order or decree in such cause to which they are not made

parties; and they may be made parties in the manner provided in chapter one of the Revised Statutes.

SEC. 40. In all cases where all the complainants or defendants, in any suit now pending, or hereafter to be brought in any court of chancery, shall die before final decree, such suit or action shall not thereby be abated, but may be revived in the name of the legal representatives of the deceased, or other person becoming interested in the cause of action by the death of such party.

SEC. 41. In all suits in chancery, and suits to obtain title to lands, in any of the courts of this State, if there be persons interested in the same, whose names are unknown, it shall be lawful to make such persons parties to such suits or proceedings, by the name and description of persons unknown, or unknown heirs or devisees of any deceased person, who may have been interested in the subject matter of the suit previous to his or her death; but in all such cases an affidavit shall be filed by the party desiring to make any unknown person a party, stating that the names of such persons are unknown, and process shall be issued against all parties, by the name and description given as aforesaid, and notices given by publication, as is required in section eight of this chapter, shall be sufficient to authorize the court to hear and determine the suit, as though all parties had been sued by their proper names.

SEC. 42. All decrees, orders, judgments and proceedings, made or had with respect to such unknown persons, shall have the same effect, and be as binding and conclusive upon them, as though such suit or proceeding had been instituted against them by their proper names.

SEC. 43. Whenever a decree shall be made in any suit in equity, directing the execution of any deed or other writing, and the party against whom the same shall have been entered shall not comply therewith, within the time required, it shall be lawful for the court to appoint a commissioner to execute the same; the execution thereof by such commissioner shall be as valid in law to pass, release or extinguish the right, title and interest of the party on whose behalf it is executed, as if it had been executed by such party in proper person, in conformity with such decree; and such deed or other writing, if it relate to land, shall, within six months after its execution by such commissioner, be recorded in the office of the recorder of the county wherein the lands may lie.

SEC. 44. In all cases where a sale of property is decreed, the court may direct the same to be made for cash, or on such credit, and on such terms as it may deem best and most equitable to the interests of the several parties.

SEC. 45. All decrees given in causes in equity in this State, shall be a lien on all real estate respecting which such decrees shall be made; and whenever, by any decree, any party to a suit in equity shall be required to perform any act other than the payment of money, or to refrain from performing any act, the court may, in such decree, order that the same shall be a lien upon the real or personal estate, or both, of such party until such decree shall be fully complied with; and such lien shall have the same, force and effect; and be subject to the same limitations and restrictions as judgments at law.

SEC. 46. When there shall be no master in chancery or commissioner to execute a decree, the same may be carried into effect by execution, or other final process, according to the nature of the case, directed to the sheriff or other officer of the proper county; which, when issued, shall be executed and returned by the sheriff or other officer to whom it may be directed, and shall have the same operation and

force, as similar writs issued upon a judgment at law. The sheriff or other officer to whom the same is directed, shall be subject to the like penalties and recoveries for misconduct or neglect in the execution or return thereof, as in cases at law; or the court may, if necessary, direct an attachment to be issued against the party disobeying such decree, and fine or imprison him, or both, in the discretion of the court and may also direct a sequestration for disobedience of any decree.

SEC. 47. In any cause in equity it shall be lawful for the court in which the cause is pending to appoint a guardian *ad litem*, to any infant or insane defendant in such cause, whether such infant or insane defendant shall have been served with process or not, and to compel the person so appointed to act. By such appointment, such person shall not be rendered liable to pay costs of suit; and he shall moreover be allowed a reasonable sum for his charges as such guardian, to be paid by the party at whose motion he was appointed, to be taxed in the bill of costs.

SEC. 48. The several circuit courts of this State shall have power to appoint, in each county, a master in chancery, who shall hold his office during the term of four years.

SEC. 49. Every master in chancery, before entering on the duties of his appointment, shall give bond, with security to be approved by the court, and take and subscribe an oath of office, which bond and oath shall be filed with the clerk of the court making the appointment.

SEC. 50. Masters in chancery, in their respective counties, shall have power to take depositions, both in law and equity, to administer oaths, to compel the attendance of witnesses, and in the absence from the county, of the circuit judge presiding in such county, to order the issuing of writs of *habeas corpus*, *ne exeat* and injunction, and perform all other duties, which, according to the laws of this State, and the practice of courts of chancery, appertain to the office.

SEC. 51. Whenever it shall happen that there shall be no master in chancery, in any county, or when such master shall be of counsel, of kin to either party, interested, or otherwise disqualified or unable to act in any suit or matter, the court may appoint a special master, to perform the duties of the office in all things concerning such suit or matter.

SEC. 52. Masters in chancery shall receive for their services such compensation as shall be allowed by law, to be taxed as other costs.

SEC. 53. Nothing in the preceding sections contained shall be construed to extend to those articles in possession of the defendant, which are exempt from execution by law.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Acts Nos. 3, 4 and 5.]

CHAPTER XXII.

CHARITABLE USES.

SECTION

1. Grants of land, not over ten acres, for school houses, &c., valid; to be recorded.
2. Grants to be made to county commissioners' court, in trust, &c.
3. Trespassers, how punished; fines, how applied.

SECTION

4. When trust is perverted, property to vest in county, unless otherwise directed in grant.
5. Property donated, may be sold by county commissioners, by consent of parties; county commissioners not to be responsible for title.

SECTION 1. All gifts and grants of land heretofore made for the erection of a school house, a house for divine worship, for burying the dead, or for any other charitable public purpose, when such gift or grant of land shall not exceed ten acres, shall be held valid in law to the use of the person or persons or religious society therein named, for the purpose of education, for divine worship or for the interment of the dead, and none other: *Provided*, That such gifts and grants shall be recorded in the county where such lands may lie, within the time prescribed by law.

SEC. 2. When any person shall hereafter deem it proper to make a donation or grant of land for the purpose of erecting a house for divine worship, a house for education or for the interment of the dead, such deed of gift or grant shall be made and executed to the county commissioners of the proper county, and their successors in office in trust, and for the use of the persons, society or collection of people therein named; which shall be held and used by such society, persons, or body of people, as therein directed, for the sole use of education, divine worship, and interment of the dead, and none other; which deed shall be recorded in the recorder's office of the proper county, within twelve months after the execution of the same: *Provided*, That in no case shall such grant for the erection of a house for divine worship exceed in quantity ten acres of land.

SEC. 3. If any person or persons shall commit any trespass upon the premises so granted, such trespasser shall be liable to pay all damages so committed, to be recovered in the name of any person who will sue for the same; and when recovered shall be paid over to those persons or societies interested in the premises, to be expended by them in repairing such damages, or making any improvements thereon that they may think fit.

SEC. 4. When any gift or grant, as aforesaid, shall be perverted, or used for any other purpose than contemplated in this chapter, or shall be abandoned by the donees, such gifts or grants shall become vested in the county where such lands may lie, unless otherwise directed in such gift or grant, by the donor, and shall be sold by the order of the county commissioners of such county, and the proceeds thereof applied for the use of education in such county.

SEC. 5. In all cases in which any land or lot has been, or may be conveyed to the county commissioners of any county in this State for the use of any religious society, congregation or church, or to the intent that houses should be erected thereon for purposes of divine worship, and the society, congregation, church or person for whose use the conveyance was made, shall desire to sell or otherwise dispose of the premises conveyed, and shall obtain the consent of the donor, or grantor, or his heirs, or their legal representatives to such sale, or disposition, it shall be the duty of the county commissioners to whom the conveyance was made, or their successors, to execute conveyances for the same, so as to divest the legal title, and release all claim of the county to the premises conveyed; but no commissioners or county shall, by virtue of such conveyance, become responsible for the title of the premises conveyed, except as against their own acts.

APPROVED: March 3, 1845.

CHAPTER XXIII.

CONGRESS.

SECTION

1. State divided into seven congressional districts.
2. Counties composing the first district.
3. Counties composing the second district.
4. Counties composing the third district.
5. Counties composing the fourth district.

SECTION

6. Counties composing the fifth district.
7. Counties composing the sixth district.
8. Counties composing the seventh district.
9. One representative in Congress elected in each district once in two years.

SECTION 1. For the purpose of electing seven representatives to the House of Representatives of the Congress of the United States, the following districts shall be and are hereby established, to be styled and known as districts numbered first, second, third, fourth, fifth, sixth and seventh.

SEC. 2. The first district shall be composed of the counties of Alexander, Union, Pulaski, Jackson, Perry, Randolph, Monroe, Washington, St. Clair, Clinton, Bond and Madison.

SEC. 3. The second district of the counties of Johnson, Pope, Hardin, Williamson, Gallatin, Franklin, Hamilton, White, Wabash, Edwards, Wayne, Jefferson, Marion and Massac.

SEC. 4. The third district of the counties of Lawrence, Richland, Crawford, Jasper, Effingham, Fayette, Montgomery, Christian, Shelby, Moultrie, Coles, Clark, Clay, Edgar, Macon, Piatt and De Witt.

SEC. 5. The fourth district of the counties of Lake, McHenry, Boone, Cook, Kane, De Kalb, Du Page, Kendall, Grundy, La Salle, Will, Iroquois, Livingston, McLean, Champaign, Vermilion and Bureau.

SEC. 6. The fifth district of the counties of Greene, Jersey, Calhoun, Pike, Adams, Marquette, Brown, Schuyler, Fulton, Peoria and Macoupin.

SEC. 7. The sixth district of the counties of Jo Daviess, Stephenson, Winnebago, Carroll, Ogle, Lee, Whiteside, Rock Island, Henry, Stark, Mercer, Henderson, Warren, Knox, McDonough and Hancock.

SEC. 8. The seventh district of the counties of Putnam, Marshall, Woodford, Tazewell, Mason, Menard, Cass, Morgan, Scott, Logan and Sangamon.

SEC. 9. One representative to Congress shall be elected from each of the districts above enumerated, once in every two years, recurring from the day of the last election, to-wit, the first Monday of August, eighteen hundred and forty-four, which representatives in Congress shall be elected as provided by law.

APPROVED: March 3, 1845.

CHAPTER XXIV.

CONVEYANCES.

SECTION

1. Livery of seizin not necessary in conveyances of real property; capacity of grantor in such case; grant, how vested; prior title not to be disturbed.
2. Effect of grant.
3. When any person is seized of lands, &c., extent of title, and legal obligation.
4. Claimant of lands, though not in possession, may convey interest therein; grantees shall have right of recovery, as fully as though grantee were in possession.
5. Estate in joint tenancy, how held; when in joint tenancy; when in common.
6. Persons seized in fee tail of lands at common law, to have estate for life only; how remainder shall pass.
7. When vendor, not having good title at the time of sale, afterwards acquires it, title to be valid.
8. Person in actual possession seven years and paying all taxes, his paper title deemed good; all persons holding under such possession to have same benefit.
9. Persons having paper title to unoccupied lands, how to acquire title; persons having better paper title, their rights.
10. Limitation to two preceding sections; *proviso*.
11. Import of the words "grant," "bargain," "sell."
12. Deeds given in security for payment of money shall be considered as mortgages.
13. Estates to one, without words of inheritance, deemed estates of inheritance, unless expressly limited.
14. Estates in remainder to posthumous heirs, how taken.
15. Married women may relinquish right of dower.
16. Conveyances of real estate; by whom may be made; in what manner and before whom acknowledged; in this State; out of this State; out of United States; mode of authentication in each case.
17. Manner of acknowledging and proving conveyance executed by husband and wife; rights of wife, how affected thereby.
18. What acknowledgment sufficient to entitle deed to record in other counties; what necessary when acknowledged before justices of the peace.
19. Deeds, &c., of lands sold for taxes, may be acknowledged before auditor.
20. When necessary to prove identity of person ac-

SECTION

- knowledging deed; how proved; how certified; how signatures of subscribing witnesses may be proved; how, in case of death of subscribing witness.
21. Married woman may release her right of dower in lands of her husband; manner of acknowledgment; what facts to be certified; effect of such acknowledged grant; right of dower bond.
 22. Deeds, &c., to be recorded in county in which the land conveyed lies; or in county to which unorganized county may be attached.
 23. Conveyances to take effect from time of being filed for record.
 24. Powers of attorney, &c., affecting real estate to be acknowledged and recorded; shall have effect, until revoked by deed.
 25. Deeds, &c., may, though not recorded, be read in evidence; if original deed be lost, transcript of record may be read in evidence.
 26. County commissioners may execute conveyances of real estate in behalf of their counties.
 27. Certificates of school lands may be transferred by indorsement, &c.; effect of such transfer; how proved.
 28. Deeds, &c., when filed for record, notice to creditors and subsequent purchasers, but not to be read in evidence, unless proved by proper testimony.
 29. Deeds of sheriffs, proved before clerk of court of record, entitled to be recorded.
 30. Sheriff may execute deed for predecessor.
 31. Persons dying, having contracted to give deed, court of chancery may enforce such contract.
 32. How case to be presented before court can act in such case.
 33. When minors are concerned, to have notice; guardian to be appointed.
 34. Legal representatives of deceased person may prosecute suit for enforcement of such contract.
 35. Court may continue cause; decree.
 36. Complete record to be made; costs awarded.
 37. How mortgages may be discharged.
 38. Penalty if mortgagee refuse to discharge mortgage.
 39. Term "real estate" defined.
 40. This chapter not to affect wills, &c.
 41. If grantor be dead, and his deed be not properly proved, defect, how supplied.

SECTION 1. Livery of seizin shall in no case be necessary for the conveyance of real property; but every deed, mortgage, or other conveyance in writing, signed and sealed by the party making the same, the maker or makers being of full age, sound mind, discreet, at large, and not in duress, shall be sufficient, without livery of seizin, for the giving, granting, selling, mortgaging, leasing or otherwise conveying or transferring any lands, tenements or hereditaments, in this State; so as to all intents and purposes, absolutely and fully to vest in every donee, grantee,

bargainee, mortgagee, lessee or purchaser, all such estate or estates as shall be specified in any such deed, mortgage, lease or other conveyance. Nothing herein contained shall be so construed as to divest or defeat the older or better estate or right of any person or persons, not party to any such deed, mortgage, lease, or other conveyance.

SEC. 2. Every estate, feoffment, gift, grant, deed, mortgage, lease, release, or confirmation of lands, tenements, rents, services or hereditaments made or had, or hereafter to be made or had, by any person or persons, being of full age, sound mind, discreet, at large, and not in duress, to any person or persons; and all recoveries, judgments and executions, had or made, or to be had or made, shall be good and effectual to him, her or them, to whom it is, or shall be so made, had or given, and to all others; to his, her or their use, against the judgment debtor, seller, feoffor, donor, grantor, mortgagor, lessor, releasor or confirmor, and against his, her or their heirs, or heirs claiming the same, only as heir or heirs, and every of them; and against all others having or claiming any title or interest in the same, only to the use of the same judgment debtor, seller, feoffor, donor, grantor, mortgagor, lessor, releasor or confirmor, or his, her, or their said heirs, at the time of the judgment, execution, bargain, sale, mortgage, covenant, lease, release, gift or grant made.

SEC. 3. Where any person or persons stand or be seized, or at any time hereafter shall stand or be seized of, and in any messuages, lands, tenements, rents, services, reversions, remainders, or other hereditaments, to the use, confidence or trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, fine, recovery, covenant, contract, agreement, will or otherwise, by any manner of means whatsoever; in every such case, all and every such person or persons, and bodies politic, that have, or hereafter shall have any such use, confidence or trust, in fee simple, for term of life or for years or otherwise, or any use, confidence or trust, in remainder or reversion, shall from thenceforth stand and be seized, deemed and adjudged in lawful seizin, estate and possession of, and in the same messuages, lands, tenements, rents, services, reversions, remainders and hereditaments, with their appurtenances, to all intents, constructions and purposes in law, of, and in such like estates, as they had or shall have in use, confidence or trust, of, or in the same; and that the estate, right, title and possession, that was or shall be in such person or persons, that were, or hereafter shall be seized of any lands, tenements or hereditaments, to the use, confidence, or trust of any such person or persons, or of any body politic, be from henceforth clearly deemed and adjudged to be in him, her or them, that have, or hereafter shall have such use, confidence, or trust, after such quality, manner, form and condition, as they had before, in or to the use, confidence, or trust, that was or shall be in them.

SEC. 4. Any person claiming right or title to lands, tenements or hereditaments, although he, she, or they may be out of possession, and notwithstanding there may be an adverse possession thereof, may sell, convey, and transfer his or her interest in and to the same, in as full and complete a manner as if he or she were in the actual possession of the lands and premises intended to be conveyed; and the grantee or grantees shall have the same right of action for the recovery thereof, and shall in all respects derive the same benefit and advantage therefrom, as if the grantor or grantors had been in the actual possession at the time of executing the conveyance.

SEC. 5. No estate in joint tenancy, in any lands, tenements or hereditaments, shall be held or claimed under any grant, devise or conveyance whatsoever, here-

tofore or hereafter made, other than to executors and trustees, unless the premises therein mentioned shall expressly be thereby declared to pass, not in tenancy in common, but in joint tenancy; and every such estate, other than to executors or trustees, (unless otherwise expressly declared as aforesaid,) shall be deemed to be in tenancy in common.

SEC. 6. In cases where, by the common law, any person or persons might hereafter become seized, in fee tail, of any lands, tenements or hereditaments, by virtue of any devise, gift, grant or other conveyance, hereafter to be made, or by any other means whatsoever, such person or persons, instead of being or becoming seized thereof in fee tail, shall be deemed and adjudged to be, and become seized thereof, for his or her natural life only, and the remainder shall pass in fee simple absolute, to the person or persons to whom the estate tail would, on the death of the first grantee, devisee or donee in tail, first pass, according to the course of the common law, by virtue of such devise, gift, grant or conveyance.

SEC. 7. If any person shall sell and convey to another, by deed or conveyance, purporting to convey an estate in fee simple absolute, in any tract of land or real estate, lying and being in this State, not then being possessed of the legal estate or interest therein at the time of the sale and conveyance; but after such sale and conveyance, the vendor shall become possessed of, and confirmed in the legal estate, to the land or real estate so sold and conveyed, it shall be taken and held to be in trust, and for the use of the grantee or vendee; and the conveyance aforesaid shall be held and taken, and shall be as valid as if the grantor or vendor had the legal estate or interest, at the time of said sale or conveyance.

SEC. 8. Every person in the actual possession of lands or tenements, under claim and color of title, made in good faith, and who shall, for seven successive years, continue in such possession, and shall also, during said time, pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession, by purchase, devise, or descent, before said seven years shall have expired, and who shall continue such possession, and continue to pay the taxes as aforesaid, so as to complete the possession and payment of taxes for the term aforesaid, shall be entitled to the benefit of this section.

SEC. 9. Whenever a person having color of title, made in good faith, to vacant and unoccupied land, shall pay all taxes legally assessed thereon for seven successive years, he or she shall be deemed and adjudged to be the legal owner of said vacant and unoccupied land, to the extent and according to the purport of his or her paper title. All persons holding under such tax-payer, by purchase, devise, or descent, before said seven years shall have expired, and who shall continue to pay the taxes as aforesaid, so as to complete the payment of taxes for the term aforesaid, shall be entitled to the benefit of this section: *Provided, however,* If any person, having a better paper title to said vacant and unoccupied land, shall, during the said term of seven years, pay the taxes assessed on said land for any one or more years of the said term of seven years, then and in that case such tax-payer, his heirs and assigns, shall not be entitled to the benefit of this section.

SEC. 10. The two preceding sections shall not extend to lands or tenements owned by the United States or this State, nor to school and seminary lands, nor to lands held for the use of religious societies, nor to lands held for any public purpose. Nor shall they extend to lands or tenements when there shall be an adverse title

to such lands or tenements, and the holder of such adverse title is under the age of twenty-one years, insane, imprisoned, *feme covert*, out of the limits of the United States, and in the employment of the United States or of this State: *Provided*, Such person shall commence an action, to recover such lands or tenements so possessed as aforesaid, within three years after the several disabilities herein enumerated shall cease to exist, and shall prosecute such action to judgment, or, in case of vacant and unoccupied land, shall, within the time last aforesaid, pay to the person or persons who have paid the same, all the taxes, with interest thereon, at the rate of twelve per cent. per annum, that have been paid on said vacant and unimproved land.

SEC. 11. All deeds, whereby any estate of inheritance, in fee simple, shall hereafter be limited to the grantee and his heirs, or other legal representatives, the words "grant," "bargain," "sell," shall be adjudged an express covenant to the grantee, his heirs and other legal representatives, to-wit: That the grantor was seized of an indefeasible estate, in fee simple, free from incumbrances, done or suffered from the grantor, except the rents and services that may be reserved, as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed: And the grantee, his heirs, executors, administrators and assigns, may in any action assign breaches, as if such covenants were expressly inserted: *Provided, always*, That this law shall not extend to leases at rack rent, or leases not exceeding one-and-twenty years, where the actual possession goes with the lease.

SEC. 12. Every deed conveying real estate, which, by any thing therein contained shall appear to have been intended only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage.

SEC. 13. Every estate in lands, which shall be granted, conveyed or devised to one, although other words heretofore necessary to transfer an estate of inheritance be not added, shall be deemed a fee simple estate of inheritance, if a less estate be not limited by express words, or do not appear to have been granted, conveyed, or devised by construction or operation of law.

SEC. 14. When an estate hath been, or shall be, by any conveyance limited in remainder to the son or daughter or to the use of the son or daughter of any person to be begotten, such son or daughter, born after the decease of his or her father, shall take the estate in the same manner as if he or she had been born in the life time of the father, although no estate shall have been conveyed to support the contingent remainder after his death.

SEC. 15. A married woman may relinquish her right of dower, in any of the real estate of her husband, by joining him in a deed of conveyance, and acknowledging the same in the manner hereinafter prescribed.

SEC. 16. Deeds and instruments of writing for the conveyance of real estate in this State, or any interest therein, whereby the rights of any person may be affected in law or equity, before they shall be entitled to record, shall be subscribed by the party or parties thereto, in proper person, and acknowledged or proved before one of the following officers, to-wit: *First*, when acknowledged or proved within this State, before any judge, justice or clerk of any court of record in this State, having a seal; any mayor of a city, notary public, or commissioner authorized to take the acknowledgment of deeds, having a seal, or any justice of the peace: *Second*, when executed and acknowledged or proved without this State and within the United

States or their territories, or the District of Columbia, in conformity with the laws of such State, territory or District: *Provided*, That any clerk of a court of record, within such State, territory or District, shall, under his hand and the seal of such court, certify that such deed or instrument is executed and acknowledged or proved in conformity with the laws of such State, territory or District: *Third*, when acknowledged or proven without the United States, before any court of any republic, State, kingdom or empire, having a seal, or any mayor or chief officer of any city or town, having a seal, or before any officer authorized by the laws of such foreign country, to take acknowledgments of conveyances of real estate, if he have a seal, such deed to be attested by the official seal of such court or officer; and in case such acknowledgment is taken other than before a court of record, or mayor, or chief officer of a town having a seal, proof that the officer taking such acknowledgment was duly authorized by the laws of his country to do so, shall accompany the certificate of such acknowledgment.

SEC. 17. When any husband and wife residing in this State, shall wish to convey the real estate of the wife, it shall and may be lawful for the said husband and wife, she being above the age of eighteen years, to execute any grant, bargain, sale, lease, release, feoffment, deed, conveyance or assurance, in law whatsoever, for the conveying of such lands, tenements and hereditaments; and if, after the executing thereof, such wife shall appear before some judge or other officer, authorized by this chapter to take acknowledgments, to whom she is known, or proved by a credible witness to be the person who executed such deed or conveyance, such judge or other officer shall make her acquainted with, and explain to her the contents of such deed or conveyance, and examine her separate and apart from her husband, whether she executed the same voluntarily, freely, and without compulsion of her said husband; and if such woman shall, upon such examination, acknowledge such deed or conveyance to be her act and deed, that she executed the same voluntarily and freely, and without compulsion of her husband, and does not wish to retract, the said judge or other officer shall make a certificate indorsed on, or annexed to such deed or conveyance, stating that such woman was personally known to the said judge or other officer, or proved by a witness, (naming him,) to be the person who subscribed such deed or conveyance and setting forth the examination and acknowledgment aforesaid, and that the contents were made known and explained to her; and such deed, (being acknowledged or proved according to law as to the husband,) shall be as effectual in law as if executed by such woman while sole and unmarried. No covenant or warranty contained in any such deed or conveyance, shall in any manner bind or affect such married woman, or her heirs, further than to convey from her and her heirs effectually, her right and interest expressed to be granted or conveyed in such deed or conveyance.

SEC. 18. Deeds and other conveyances of real estate, executed and acknowledged or proven in proper form in this State, before any judge or justice of the supreme or circuit courts, or before any court or officer having a seal, and attested by such seal, shall be entitled to record without further attestation. When acknowledged before a justice of the peace, residing within this State, the certificate of the clerk of the county commissioners' court, of the proper county, under his seal of office, that the person taking such proof, or acknowledgment, was a justice of the peace at the time of taking the same, shall be deemed sufficient evidence of that fact. If such justice reside within the county where the lands conveyed, are situate, no such certificate shall be required.

SEC. 19. Any conveyance or assignment of certificates of the purchase of land sold for taxes by the auditor of public accounts, may be acknowledged before said auditor, and such acknowledgment shall be deemed good and valid.

SEC. 20. No judge or other officer shall take the acknowledgment of any person to any deed or instrument of writing as aforesaid, unless the person offering to make such acknowledgment shall be personally known to him to be the real person who, and in whose name such acknowledgment is proposed to be made, or shall be proved to be such, by a credible witness, and the judge or officer taking such acknowledgment shall in his certificate thereof, state that such person was personally known to him to be the person whose name is subscribed to such deed or writing, as having executed the same, or that he was proved to be such by a credible witness, (naming him,) and on taking proof of any deed or instrument of writing by the testimony of any subscribing witnesses, the judge or officer shall ascertain, that the person who offers to prove the same, is a subscribing witness, either from his own knowledge, or from the testimony of a credible witness; and if it shall appear from the testimony of such subscribing witness that the person whose name appears subscribed to such deed or writing, is the real person who executed the same, and that the witness subscribed his name as such, in his presence and at his request, the judge or officer shall grant a certificate, stating that the person testifying as subscribing witness was personally known to him to be the person whose name appears subscribed to such deed as a witness of the execution thereof, or that he was proved to be such by a credible witness, (naming him,) and stating the proof made by him; and where any grantor or person executing such deed or writing and the subscribing witnesses are deceased, or can not be had, the judge or officer, as aforesaid, may take proof of the hand writing of such deceased party and subscribing witness or witnesses (if any) and the examination of a competent and credible witness, who shall state on oath or affirmation, that he personally knew the person, whose hand writing he is called prove, and well knew his signature, (stating his means of knowledge,) and that he believes the name of such person subscribed to such deed or writing, as party or witness, (as the case may be,) was thereto subscribed by such person; and when the hand writing of the grantor or person executing such deed or writing, and of one subscribing witness, (if any there be,) shall have been proved as aforesaid, the judge or officer shall grant a certificate thereof, stating the proof aforesaid.

SEC. 21. It shall and may be lawful for any married woman to release her right of dower, of, in, and to any lands and tenements, whereof her husband may be possessed or seized, by any legal or equitable title during coverture, by joining such husband in the deed or conveyance, for the conveying of such lands and tenements, and appearing and acknowledging the same before any judge or other officer authorized to take acknowledgments by this chapter; and it shall be the duty of such judge or other officer, if such woman be not personally known to him, to be the person who subscribed such deed or conveyance, to ascertain the same by the testimony, of at least one competent and credible witness; and upon being satisfied of that fact, shall acquaint such woman with the contents of the deed or conveyance, and shall examine her separate and apart from her husband, whether she executed the same, and relinquished her dower to the lands and tenements therein mentioned, voluntarily, freely, and without compulsion of her said husband; and if she acknowledge that she executed the same, and relinquishes her dower in the lands and tenements therein mentioned, voluntarily and freely and without

the compulsion of her husband, such judge or other officer shall grant a certificate to be indorsed on, or annexed to such deed, stating that such woman was personally known to him, or was proved by a witness, (naming him,) to be the person who subscribed such deed or writing; and that she was made acquainted with the contents thereof, and was examined, and acknowledged such deed as aforesaid; which, being recorded, together with the deed, duly executed and acknowledged by the husband according to law, shall be sufficient to discharge and bar the claim of such woman to dower, in the lands and tenements conveyed by such deed or conveyance.

SEC. 22. Deeds and other instruments relating to, or affecting the title to real estate in this State, shall be recorded in the county in which such real estate is situated, but if such county is not organized, then in the county to which such unorganized county is attached for judicial purposes.

SEC. 23. All deeds, mortgages and other instruments of writing which are required to be recorded, shall take effect, and be in force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers, without notice; and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers, without notice, until the same shall be filed for record.

SEC. 24. All powers or letters of attorney, or agency, authorizing the granting, selling, conveying, assuring, releasing or transferring, or for the executing or acknowledging of any grants, sales, leases, assurances, or other conveyances or writings whatsoever, concerning any lands and tenements or whereby the same may be affected in law or equity, shall be acknowledged or proved, and recorded as herein before required in cases of deeds and other assurances; after which, all grants, conveyances and assurances, made and acknowledged, pursuant to the powers granted, unless the same be revoked by a deed duly acknowledged and proven, and recorded as aforesaid, shall be as valid and effectual as if executed and acknowledged by the constituent or constituents.

SEC. 25. Every deed, conveyance or other writing, of, or concerning any lands, tenements or hereditaments, which, by virtue of this chapter shall be required or entitled to be recorded as aforesaid, being acknowledged or proved according to the provisions of this chapter, whether the same be recorded or not, may be read in evidence without any further proof of the execution thereof, and if it shall appear to the satisfaction of the court, that the original deed so acknowledged or proved and recorded, is lost or not in the power of the party wishing to use it, a transcript of the record thereof, certified by the recorder in whose office the same may be recorded, may be read in evidence, in any court of this State, without proof thereof.

SEC. 26. The county commissioners of the several counties of this State are hereby authorized to execute and deliver all deeds, grants, conveyances and bonds which may become necessary in settling and transferring real estate belonging to their respective counties; and such deeds, grants, conveyances and bonds, if made without fraud or collusion, shall be obligatory upon the counties to all intents and purposes.

SEC. 27. Purchasers of school or canal lands or town lots, may by indorsement in writing on their certificates of purchase, transfer and assign all right and title to the lands or lots purchased, or transfers or assignments of such certificates may be made upon a separate paper, and transferees or assignees, may in like man-

ner transfer and assign all such certificates, and in all cases where certificates have been or shall hereafter be transferred or assigned, patents shall issue in the name of the last transferee or assignee: *Provided*, That the transfers or assignments, shall be proven by certificate of the school or acting canal commissioner; or proven in the manner required to prove the execution of deeds of conveyance, to entitle them to be admitted to record.

SEC. 28. Deeds, mortgages and other instruments of writing relating to real estate, shall be deemed, from the time of being filed for record, notice to subsequent purchasers and creditors, though not acknowledged or proven according to law; but the same shall not be read as evidence unless their execution be proved in manner required by the rules of evidence applicable to such writings, so as to supply the defects of such acknowledgment or proof.

SEC. 29. All deeds which may be executed by any sheriff or other officer, for any real estate, sold on execution, upon being acknowledged or proven before any clerk of any court of record in this State, and certified under the seal of such court, shall be admitted to record in the county where the real estate sold, shall be situated.

SEC. 30. The successor of any sheriff or other officer shall be authorized to execute deeds for real estate sold by the predecessor, or to acknowledge any deed executed and not acknowledged by such predecessor.

SEC. 31. When any person or persons who have heretofore entered, or may hereafter enter into any contract, bond or memorandum in writing, to make a deed or title to land in this State, for a valuable consideration and shall depart this life, or have died heretofore, without having executed and delivered said deed, it shall and may be lawful for any court having chancery jurisdiction, in the proper circuit in which such case shall arise, to make decree, compelling the executors or administrators of such deceased person, to execute and deliver such deed to the party having such equitable right as aforesaid to the same, or his heirs, according to the true intent and meaning of said contract, bond or memorandum of the deceased; and all such deeds shall be good and valid in law.

SEC. 32. It shall not be lawful for any court to make such decree as aforesaid, except upon the petition in writing of the person entitled to the benefit of the same, or his heirs, setting forth the said contract, bond or memorandum in writing, and fully describing the lands to be conveyed; nor until the person or persons so applying for such title, shall have given reasonable notice of the time and place of such application, to the executors, administrators and heirs of such person so deceased as aforesaid, and shall have fully paid, discharged and fulfilled the consideration of such contract, bond or memorandum in writing, according to the true intent, tenor and effect thereof.

SEC. 33. In all cases where any minor heirs shall be interested in such proceeding as aforesaid, reasonable notice of such application shall be given to the guardian or guardians of such minors; and if there shall be no guardian, then the said court shall appoint a guardian or guardians, to litigate and act in such case.

SEC. 34. The executors, administrators or heirs of any deceased person or persons, who shall have made such contract, bond or memorandum in writing as aforesaid, in his or her life time, for the conveyance of land, for a valuable consideration, when such consideration has been paid and fulfilled as aforesaid, may, upon application in writing, obtain such decree as aforesaid, upon giving notice to the party to whom such deed is intended to be made, and under the same condition as is provided in this chapter.

SEC. 35. In all cases where application shall be made as aforesaid, the court shall have power to continue the same from term to term, to obtain such evidence as the nature of the case shall require; and no decree for the conveyance of land, upon application as aforesaid, shall be made, unless the said courts shall be satisfied that decree can be made without injustice to any heir or creditor of the deceased, and that the same is just and equitable.

SEC. 36. A complete record of such petition and proceedings thereon shall be made, and the court shall decree payment of costs as shall appear right and equitable.

SEC. 37. Every mortgagee of real estate, his assignee or other legal representative, having received full satisfaction and payment of all such sum or sums of money as are really due to him or her from the mortgagor, shall, at the request of the mortgagor, enter satisfaction upon the margin of the record of such mortgage, in the recorder's office, which shall forever thereafter discharge and release the same, and shall bar all actions or suits brought, or to be brought, thereupon. Or it shall be deemed a sufficient release and extinction of any mortgage granted upon any real estate, if the mortgagee, his or her legal representative or assigns, shall grant a full release of the same under his, her, or their seal and signature, in the presence of an attesting witness, and acknowledge the execution of such release in the same manner, and under the same restrictions, in which deeds are acknowledged by the existing laws of this State.

SEC. 38. If such mortgagee, by himself or herself, his or her attorney, shall not, within three months after request, and tender made of his or her reasonable charges, repair to said office, and there make acknowledgment as aforesaid, he or she neglecting or failing so to do, shall, for every such offence, forfeit and pay to the party or parties aggrieved, any sum not exceeding the mortgage money, to be recovered in any court of record, by action of debt.

SEC. 39. The term "real estate," as used in this chapter, shall be construed as co-extensive in meaning with "lands, tenements and hereditaments," and as embracing all chattels real.

SEC. 40. This chapter shall not be construed so as to embrace last wills and testaments.

SEC. 41. If any grantor shall not have duly acknowledged the execution of any deed or instrument, entitled to be recorded, and the subscribing witnesses be dead, or not to be had, it may be proved by evidence of the hand writing of the grantor, and of at least one of the subscribing witnesses, which evidence shall consist of the testimony of two or more disinterested persons, swearing to each signature.

APPROVED: March 3, 1845.

CHAPTER XXV.

CORPORATIONS.

DIVISION I. TOWNS.

SECTION

1. Inhabitants of town having 150 inhabitants, may become incorporated; mode of proceeding in such cases; notice given and meeting held.
2. Inhabitants to decide by vote; vote of two-thirds necessary.
3. Meeting called to elect trustees; vacancies, how filled.
4. Trustees to choose president; style of corporation; powers; duty of clerk.
5. Powers of trustees, as to police, fires, taxes, &c.
6. Duties of trustees, collectors to give bond; term of office.
7. Mode of holding elections; proceedings to be public; ordinances to be published; quorum.
8. How moneys appropriated; accounts to be kept; sales for taxes; fines, how collected and paid.
9. How corporation may be dissolved.
10. Statement of polls; poll books, where deposited; oath of office.
11. Trustees may appoint constable; his powers and duties.
12. May abate nuisances; punish assaults, &c.; trial by jury.
13. May imprison offenders, for what time.

SECTION

14. May adopt laws respecting wagons, and to punish disturbances.
15. May regulate fees and compensation of officers.
16. When town becomes incorporated, hereby, other like laws repealed; work on roads; disposition of funds, &c., if corporation be dissolved.
17. Towns, and additions thereto to be surveyed and laid out.
18. In-lots and out-lots, to be laid out in plat and numbered.
19. Stone monuments at corners of lots.
20. Map to be certified, acknowledged and recorded.
21. Recorded plat to be evidence of conveyance, &c.
22. If county be unorganized, where plat recorded.
23. Old plats to be acknowledged and recorded; penalty for neglect.
24. Penalty for not placing corner stones, &c., in towns hereafter laid out.
25. Selling lots before law complied with, penalty for.
26. Fees of county surveyor.
27. Forfeitures, how recovered; to whose use; who shall bring suit.

SECTION 1. Whenever the white male residents of lawful age of any town in this State, having not less than one hundred and fifty inhabitants, shall wish to become incorporated for the better regulation of their internal police, it shall be lawful for the said residents, who may have resided six months therein, or who shall be the owner of any freehold property therein, to assemble themselves together, in public meeting, at the court house or other place in said town, and when so assembled, they may proceed to choose a president and clerk of the meeting from among their number, both of whom shall be sworn, or affirmed, by any person authorized to administer oaths, faithfully to discharge the trust reposed in them as president and clerk of said meeting: *Provided, however,* That at least ten days' notice of the time and place of holding such meeting shall have been previously given by advertising in some newspaper of the town, or by setting up written notices, in at least three of the most public places in such town.

SEC. 2. The residents, as aforesaid, of any town having assembled as directed in the first section of this division, may proceed to decide by vote, *viva voce*, whether they will be incorporated or not, and the president or clerk, after their votes are given in, shall certify under their hands, the number of votes in favor of being incorporated and the number against being incorporated; and if it shall appear that two-thirds of the voters present, are in favor of being incorporated, the presi-

dent and clerk shall deliver a certificate of the state of the polls to the board of trustees, to be elected as hereinafter provided.

SEC. 3. Whenever the qualified voters, of any town, shall have decided in the manner herein provided, that they wish to be incorporated, it shall be the duty of the clerk of the meeting, at which they may so decide, to give at least five days previous public notice to the said voters, to assemble at the court house, or some other public place in such town, on a day to be named in such notice, to elect by *viva voce* vote, five residents and freeholders of such town, for trustees of the same, who shall hold their office for one year, and until other trustees are chosen and qualified; at which first election, the president and clerk of the first meeting shall preside, or in case of the absence of either of them, some suitable person shall be appointed by the electors present to fill such vacancy or vacancies. And at every succeeding election for president and trustees, the preceding board of trustees shall direct the manner in which the same shall be conducted.

SEC. 4. The board of trustees of any town, elected agreeably to the provisions of this division, shall choose a president out of their own body; and the president and trustees aforesaid, and their successors in office, shall thenceforth be considered, in law and equity, a body corporate and politic, by the name and style of "the president and trustees of the town of _____;" and by such name and style shall be forever able and capable in law and equity to sue and be sued, to plead and be impleaded, to answer and be answered unto, defend and be defended in all manner of suits, actions, complaints, pleas, causes, matters and demands, of whatever kind or nature they may be, in as full and effectual a manner, as any person or persons, bodies corporate or politic can or may do; and may have a common seal, and may alter the same at pleasure. The said president and trustees shall require their clerk to keep a fair journal and record of all their proceedings, and record all by-laws and ordinances which they may make, in a book to be provided for that purpose.

SEC. 5. The president and trustees, or a majority of them, of any town incorporated as herein directed, shall have power to make, ordain and establish and execute such ordinances in writing, not inconsistent with the laws, or the constitution of this State, as they shall deem necessary to prevent and remove nuisances, to restrain and prohibit gambling, or other disorderly conduct, and to prevent the running of, and indecent exhibitions of horses, within the bounds of such town; to provide for licensing public shows; to regulate and establish markets; to sink and keep in repair public wells; to keep open and in repair the streets and alleys of such town, by making pavements or side-walks as to them may seem needful: *Provided, always,* That the lot in front of which any side-walk is made, shall be taxed to pay at least one-half of the expenses of making such side-walk. The said president and trustees shall also have power to provide such means as they may deem necessary to protect such town from injuries by fires. And for the purpose of carrying the aforesaid powers into effect, the said president and trustees shall have power to define the boundaries of such town: *Provided,* That the same shall not exceed one mile square; and to levy and collect annually a tax, on all the real estate in such town, not exceeding fifty cents on every hundred dollars of assessment valuation thereof.

SEC. 6. It shall be the duty of the said president and trustees, to cause all the streets and alleys of such town, and all the public roads passing from and through such town, for one mile from the centre thereof, to be kept in good repair; and to this end they are authorized to require every male resident of such town, over the

age of twenty-one years, to labor in said streets, alleys and roads, at least three days in each and every year; and if such labor shall be insufficient, to appropriate so much of the tax levied on real estate, as may be necessary to keep the said streets, alleys and roads in repair, and also to appoint and prescribe the duty of all such officers, for such town, as they may deem necessary to carry into effect the foregoing powers; the collectors of the corporation tax, and the treasurer, shall severally give bond, made payable to the president and trustees, and their successors in office, with good and sufficient securities, in such sum as may by said president and trustees be deemed advisable. And a clause shall be inserted, that if at any time additional security be required, the same shall be given: the conditions of which bonds shall be, that the officer shall faithfully perform the duties of his office; and said officers shall remain in office one year, (unless sooner removed,) and until others shall be appointed, and shall have given bonds.

SEC. 7. The said president and trustees elected under this division, shall continue in office for one year, and until their successors shall be elected and qualified. And it shall be their duty, before their time expires,* to give at least ten days public notice to the qualified voters under this division, to meet at such place as they may name, in such town, and elect a new board of president and trustees for such town; and all vacancies which may happen in said board by resignation, or otherwise, before their term of office expires, shall be filled by the other members of the board. The proceedings of said board shall always be public; and all their ordinances, before taking effect, shall be published for at least ten days, in a newspaper of such town or by setting up copies of the same, in three of the most public places in such town. A majority of said board shall constitute a quorum.

SEC. 8. All moneys arising from the collection of taxes, fines, penalties and forfeitures, shall be appropriated by said president and trustees towards the erecting, improving and regulating those objects which are placed under their control and jurisdiction, and to none others. And it shall be their duty to have an account current of the fiscal concerns of the corporation so kept, as will at all times, show the true situation of the same to such as may desire to inspect the same; and the said president and trustees shall have full power to enforce their ordinances, by authorizing the person or persons by them appointed to collect any tax imposed in pursuance of this division, to collect the same by distress and sale of goods and chattels of the person chargeable with the same, on giving at least thirty days public notice of the time and place of such sale; and if no goods and chattels of the person chargeable with said tax, can be found, it shall be lawful to sell any town lot, owned by such person, or so much thereof as will pay the tax due and in arrear from any such person, upon giving at least thirty days' notice of the time and place of making such sale, paying to the owner or owners, the overplus, if any. The president and trustees may impose fines for the breach of their ordinances; but no fine shall be inflicted on any one person, for any one breach of any ordinance, of more than five dollars, which fine may be recovered before any justice of the peace, by action of debt, in the name of the president and trustees of such town, and collected by execution as other judgments of justices of the peace. All fines collected in pursuance of this division, shall, by the officer collecting the same, be paid over to the treasury of the corporation; and for an omission to do so, such officer may be proceeded against by the president and trustees, in an action of debt for the same.

SEC. 9. Two-thirds of the qualified voters of any town incorporated according to the provisions of this division shall have power to dissolve the same at any annual election for president and trustees, by voting against the incorporation, as is directed in the second section of this division.

SEC. 10. Whenever a president and trustees shall be elected for any town as herein directed, it shall be the duty of the president and clerk of the first meeting, provided for in the first section of this division, to deliver to them a certified statement in writing, of the polls at said first meeting; and it shall be the duty of such president and trustees, to deposit the same with the clerk of the county commissioners' court of the proper county, to be entered on record in his office; and before entering upon their duty, to take an oath to discharge this duty according to their best abilities.

SEC. 11. The president and trustees of towns incorporated by virtue of the provisions of this division, shall have power to appoint a town constable, and authorize him to execute all writs, process and precepts which may be issued against persons for the violation of the laws of the corporation, and to arrest, on view, all persons who may violate such laws, and to collect all fines, forfeitures and penalties which may be assessed or recovered for the use of the corporation, and to require bond and security of said constable in such sum as they may think proper.

SEC. 12. The said president and trustees are also vested with power to declare what shall be considered a nuisance within the limits of the corporation, and to provide for the abatement or removal thereof; also, to regulate the speed which horses and other animals may be rode or driven within the limits of the corporation; to provide for the trial and punishment of persons who may be engaged in assaults, assaults and batteries, and affrays within the limits of the corporation, and to provide that such punishment may be inflicted for any offence against the laws of the corporation, as is or may be provided by law for like offences against the laws of the State: *Provided*, That no person shall be deprived of the right of trial by jury in any case, when such person would be entitled to a trial by a jury for a like offence against the law of the State.

SEC. 13. The president and trustees as aforesaid, are further authorized to provide for the punishment of offenders by imprisonment in the county jails, in all cases where such offenders shall fail or refuse to pay fines which may be assessed, or for forfeitures or penalties which may be recovered: *Provided*, That no person shall be imprisoned under the provisions of this section, for a longer period than twelve hours for every five dollars of any fine assessed, or forfeiture or penalty recovered.

SEC. 14. The said president and trustees are also authorized to adopt such laws for the security of wagons and other carriages which may be used within the limits of the corporation, and for the protection of the inhabitants against injury by reason of horses or other animals fastened to such wagons or carriages running with the same, as they may deem necessary; also, to provide for the punishment of persons who may at any time, disturb the peace of the inhabitants of the town, or the deliberations or proceedings of any public meeting of such inhabitants.

SEC. 15. The said president and trustees shall also have power to regulate the fees and compensation of all officers of the corporation.

SEC. 16. Whenever any town shall be incorporated under the provisions of this division, all other laws incorporating the same, or made to regulate in any way, the internal police of such town, shall be considered as repealed. The inhabitants of any town so incorporated, shall not be required to work upon any road except as herein

required. And whenever any town corporation shall be dissolved, according to this division, all persons having any funds belonging to such corporation, in their hands, shall pay the same into the county treasury; and all bonds and securities taken for the same by such corporation, shall vest in the county commissioners for the use of such county, who may have and maintain any proceedings thereon in law or equity, which might have been had by the said corporation.

SEC. 17. Whenever any county commissioners or other person or persons wish to lay out a town in this State, or an addition or subdivision of out-lots, said commissioners or other person or persons shall cause the same to be surveyed, and a plat or map thereof made by the county surveyor, if any there be, of the county in which said town or addition is situated; but if there be no county surveyor in the county, then, and in that case, by the county surveyor of an adjacent county; which plat or map shall particularly describe and set forth all the streets, alleys, commons or public grounds, and all in and out-lots, or fractional lots, within, adjoining or adjacent to said town, giving the names, widths, corners, boundaries and extent of all such streets and alleys.

SEC. 18. All the in-lots intended for sale shall be numbered in progressive numbers, or by the squares in which they are situated, and their precise length and width shall be stated on said plat or map; and all out-lots which shall not exceed ten acres in size, shall in like manner, be surveyed and numbered, and their precise length and width stated on the plat or map, together with any streets, alleys or roads which shall divide or border on the same.

SEC. 19. The county commissioners, proprietor or proprietors of the town, addition or subdivision of out-lots, by themselves or agent, shall, at the time of surveying and laying out the same, plant and fix at a corner of the public ground, or at the corner of a public lot, if any there be, and if there be none, then at the corner of some one of the in-lots in the town, and at the corner of each out-lot a good and sufficient stone, of such size and dimensions, and in such manner as the surveyor shall direct, for a corner from which to make future surveys; and the point or points where the same may be found, shall be designated on the plat or map.

SEC. 20. The plat or map, after having been completed, shall be certified by the surveyor and the county commissioners, and every person or persons whose duty it may be to comply with the foregoing requisitions, shall, at or before the time of offering such plat or map for record, acknowledge the same before a justice of the supreme court, justice of a circuit court, or a justice of the peace in the county where the land lies; a certificate of such acknowledgment shall be by the officer taking the same indorsed on the plat or map; which certificate of the surveyor and acknowledgment shall also be recorded, and form a part of the record.

SEC. 21. The plat or map, when made out, certified, acknowledged and recorded, as required by this division, and every donation or grant to the public, or any individual or individuals, religious society or societies, or to any corporation or bodies politic, marked or noted as such on said plat or map, shall be deemed in law and in equity a sufficient conveyance to vest the fee simple of all such parcel or parcels of land as are therein expressed, and shall be considered to all intents and purposes as a general warranty against such donor or donors, their heirs and representatives to the said donee or donees, grantee or grantees, for his, her or their use, for the uses and purposes therein named, expressed or intended, and for no other use or purpose whatever. And the land intended to be for streets, alleys, ways, commons or other public uses, in any town or city, or addition thereto, shall

be held in the corporate name thereof, in trust to, and for the uses and purposes set forth and expressed or intended.

SEC. 22. If the county in which said town or addition is situated shall not be organized, then, and in that case, the plat or map shall be recorded in the recorder's office of that county to which the county in which said town is situated shall at the time be attached for judicial purposes.

SEC. 23. Where any town, addition or subdivision of out-lots has been heretofore laid out, and lots sold in this State, either by county agents, commissioners or other persons, and a plat or map of the same has not been acknowledged and recorded as required by law, it shall be the duty, and it is hereby required of the present county commissioners, or a majority of them, in such county, or other person or persons, proprietors, who have laid out the same, or his, her or their legal representatives, to have the same fairly, fully and clearly made out, certified, acknowledged and recorded in the proper county, in the form and manner required by this division, noting and particularly describing the donations of land, or otherwise, to individuals, societies, bodies politic, or for common or public uses: *Provided*, That if the lots shall have been differently numbered, and sales made, and they can not well be changed, they shall be returned as originally stated; but in all other respects, the plat or map shall conform to the provisions of this division; and if any county commissioner or commissioners, or other person or persons, whose duty it is to comply with the requisitions in this section named, shall neglect or refuse so to do, he or they shall forfeit and pay the sum of one hundred dollars for each and every month he or they shall delay a compliance.

SEC. 24. If any county commissioners, or other person or persons, shall hereafter lay out any town, or addition to any town or city, and neglect to plant the corner stones therein, or cause the same to be surveyed and platted in any other manner than that which is prescribed in this division, every person so offending shall forfeit and pay the sum of one hundred dollars.

SEC. 25. If any person or persons shall dispose of, offer for sale, or lease for any time exceeding five years, any out or in-lot, in any town, or addition to any town or city, or any part thereof, which shall hereafter be laid out, until all the foregoing requisitions of this division shall have been complied with, every person so offending shall forfeit and pay the sum of twenty-five dollars for each and every lot or part of lot so sold or disposed of, leased, or offered for sale.

SEC. 26. The county surveyor, who shall lay out, survey and plat any town or addition, shall be entitled to receive twenty-five cents for each and every in and out-lot, and the recorder of the county recording the same shall receive the sum of four cents for each and every lot the same may contain.

SEC. 27. All forfeitures and liabilities which may be incurred and arise under this division, shall be prosecuted for, and recovered in the name of the county treasurer of the proper county, one-half thereof to go to the county in which the town or addition lies, to be applied to such objects and for such purposes as the county commissioners' court shall direct, and the other moiety to the use and benefit of the inhabitants and owners of property in such town or city, to be disbursed under the direction of the trustees or corporation officers, in improving the streets and alleys, and other objects of internal improvement in said town, the addition, if any, inclusive; and it is hereby made the duty of the county treasurer, whenever he shall be satisfied that the provisions of this division have been violated, and a forfeiture incurred, to bring suit, and prosecute for the same.

DIVISION II. ACADEMIES.

SECTION

28. Five or more may be incorporated to establish academy, &c., and hold real estate.
29. First meeting; ten days' notice given; trustees to be elected; powers.
30. Certificate of election to be recorded.
31. Trustees shall be body corporate; powers and obligations.
32. Have no power to sell real estate.
33. Stockholders; annual elections; vacancies, how filled.
34. May receive donations.
35. Application of funds; donations, how applied.

SECTION

36. Treasurer to be elected and sworn; his duties.
37. Who may be stockholders; who may vote.
38. Trustees to receive subscriptions; concerning elections.
39. Payments by stockholders, how made.
40. Who may receive instruction; who be stockholder.
41. Proceedings in case of violation of this law.
42. If day of election pass by, another day to be named.
43. Trustees may prescribe course of instruction, appoint teachers, &c.

SECTION 28. When five or more persons shall associate themselves together, for the purpose of forming an academy or seminary of learning in their neighborhood, and shall acquire by gift, grant or purchase, any lots or lands not exceeding one hundred and sixty acres, and shall build a house thereon for the purposes of education, it shall be lawful for them to apply to the county commissioners' court of the county in which the land so acquired may be situated, to receive the legal title to said land, and hold it in trust for them until the persons so associated shall become qualified as a body corporate, to receive the same in the manner and mode hereinafter provided for.

SEC. 29. It shall be lawful for the persons associated together for the purposes named in the preceding section, or a majority of them, to meet at some public place in the neighborhood of the intended academy or seminary of learning, after giving ten days' notice thereof by advertisement set up at three public places in the vicinity, or by notice in some public newspaper printed in the county, and then and there proceed to the election of not less than five nor more than seven trustees, a majority of whom shall be capable of receiving a deed or deeds from the county commissioners' court in which the same may lie, for such lots or lands as may be held in trust for such association under the provisions of the twenty-eighth section of this chapter.

SEC. 30. The clerk who may have acted as such at the election of said trustees, shall within ten days thereafter deposit in the recorder's office of the county where such lands or lots may lie, a certificate of the election of said trustees, which shall be immediately recorded in some book in which deeds are recorded, and the lots or lands so deeded by the county commissioners' court aforesaid, shall vest in said trustees and their successors in office, for the sole use and benefit of said academy or seminary of learning, forever, all the right and title to such lots or lands for the purposes herein named and no other.

SEC. 31. As soon as the clerk of such election shall deposit with the recorder of the county as aforesaid, a certificate of said election, stating therein the name of the association, and for what object formed, and the names of the trustees elected, then, and from that time, the said trustees and their successors in office shall be created and remain a body corporate and politic, and in the name and style assumed by them, shall remain in perpetual succession, with power to sue and be sued, to

plead and be impleaded, to acquire, hold and convey property, real and personal, to have and to use a common seal, to alter the same at pleasure, to make and alter from time to time such by-laws as they may deem necessary for the government and regulation of such academy or seminary of learning, its officers servants and property.

SEC. 32. The aforesaid trustees, and their successors in office, shall have no power nor authority under this law to sell or convey away any of the lots or lands deeded to them by the county commissioners' court, but the same shall be held in trust forever for the purposes for which said lots or lands were originally given, granted or purchased, and for no other use or purpose whatsoever.

SEC. 33. The persons associated under the provisions of this division, shall be called and deemed stockholders, and from their number, after the first election and organization, shall elect annually in such manner, mode and time, as they may fix by by-law, not less than five, nor more than seven trustees, who shall continue in office until their successors are duly elected and qualified; and before entering on the duties of their office, they shall take an oath before some justice of the peace, faithfully to perform the duties enjoined on them by this division, and by the by-laws of the association to which they belong: and should any vacancy occur in the board of trustees before the expiration of the year, either by death or resignation, the remaining members of the board shall be authorized to fill such vacancy from among the stockholders; which appointment shall hold and continue until the ensuing annual election.

SEC. 34. The trustees, when elected and qualified, and their successors in office, shall be competent in law or equity to take or receive in their corporate name, and for and in behalf of the associated stockholders, any estate, real, personal or mixed, by the gift, grant, bargain and sale, conveyance, will, demise or bequest of any person or persons whatsoever, and the same estate, whether real, personal or mixed, to grant, bargain, sell, convey, demise or place at interest or otherwise dispose of, for the use and benefit of the academy or seminary whose interests they represent.

SEC. 35. Said trustees shall faithfully apply all funds collected, or the available proceeds thereof, in erecting, completing or repairing suitable buildings, paying suitable salaries to the necessary officers, instructors and servants, in procuring books, stationery, maps, charts, globes and apparatus necessary to be used in an academy or seminary of learning; and in case any donation, devise or bequest shall be made to any institution established under the provisions of this division, and the corporation to which the same shall be made, shall accept the same, such donation, devise or bequest shall be applied in conformity with the express conditions of the donor or deviser.

SEC. 36. At the time of the annual election of trustees, the stockholders in each corporation created under the provisions of this division, shall elect a treasurer, who shall, before he enters upon the duties of his office, give bond, with approved security, to the trustees thereof, in such penal sum as they may require, for the faithful performance of the duties of his office, and who, for good cause, may be removed by the concurrent vote of two-thirds of the trustees; and in case of his death, removal, resignation or refusal to serve, it shall be lawful for the trustees at any of their meetings, to appoint another treasurer in his stead, to remain in office till the expiration of the time for which his predecessor was elected.

SEC. 37. On the payment of such sum as the stockholders, in each corporation under the provisions of this division may ordain by their by-laws, every free white person shall be considered a stockholder and be entitled to one vote, and it may be lawful for each and every stockholder for the time being, his executors, administrators or assigns, to give, sell, devise and dispose of their respective rights or shares in such academy or seminary, and such donee or purchaser shall be entitled to all the rights of the original holders.

SEC. 38. The first board of trustees elected under the provisions hereof, shall, and they are hereby appointed commissioners to solicit and receive subscriptions of stock to the corporation which they represent, and give receipts for the same, and pay the same over to the treasurer when elected and qualified; and said trustees, within six months from the time of their first election, shall give public notice in some newspaper of the county, if there be any, or in at least three public places in the neighborhood of the location of the academy or seminary, of the time and place of holding an election of trustees and treasurer; and said election shall be held between the hours of twelve, M. and six, P. M.; and said trustees, or any three of them, may act as judges of elections.

SEC. 39. Each stockholder shall be required at or before the second election of trustees, to pay five dollars on each share by him or her subscribed, and the residue at such time, and in such amounts, as shall be required by the board of trustees; and if the instalments are not paid within six months from the time required, then the amount already paid by him or her, shall be forfeited to the corporation.

SEC. 40. Any academy or seminary established under the provisions of this division, and in operation, shall at all times be open for the use and privilege of every free white person who may wish to be instructed therein, if such person will comply with the by-laws and regulations of the corporation, and pay such sum as the trustees may require for the instruction of students attending such academy or seminary; and every free white person who may at any time tender to the treasurer of the corporation the sum required by the by-laws to constitute a stockholder, shall be admitted as such, and receive from the treasurer a certificate of stock.

SEC. 41. If at any time any corporation created under this division, shall violate any of its provisions, it shall be the duty of the attorney general when he may have knowledge thereof, to file an information in the nature of a *quo warranto*, for the purpose of vacating the same: *Provided*, In that case the trustees shall have the right of selling all the property, real and personal, belonging to such corporation, and after paying all its debts, the balance, if any, shall be distributed *pro rata* among the stockholders thereof.

SEC. 42. In case it should happen that an election of trustees should not be made on the day appointed by the by-laws of any corporation established by this division, such corporation shall not for that cause be deemed to be dissolved, but it shall be lawful on any other day to hold and make an election of trustees, in such manner as shall be prescribed by the by-laws and ordinances of such corporation.

SEC. 43. All corporations created under the provisions of this division, may from time to time prescribe and regulate the course of studies to be pursued in such institution, fix the rate of tuition, appoint instructors, officers, and such assistants and agents as may be deemed necessary in managing its concerns; and do all and every thing that may be fit and proper, for the purpose of promoting the cause of education, that is not inconsistent with the provisions hereof, or contrary to the constitution and laws of the United States and of this State.

DIVISION III. RELIGIOUS SOCIETIES.

SECTION

44. Religious societies may receive gifts of land, not over ten acres, for erecting houses of worship; trustees.
45. Certificate of election of trustees to be recorded; their term of office; subsequent elections.
46. Trustees to have perpetual succession; property vested in them; how property to be held; trustees may sue and be sued; have power under direction, &c., to make deeds, &c.; effect thereof; no deed to be made, to defeat objects of grant.

SECTION

47. Power of society respecting trustees, and of its estate.
48. If society is dissolved, what disposition made of property; if trustees be not elected at the proper time, society not dissolved thereby, but other day may be named.
49. The provisions hereof to apply to estate heretofore acquired; such rights not to accrue until the provisions hereof be complied with.

SECTION 44. It shall be lawful for the members of any society or congregation heretofore formed in this State for purposes of religious worship, and for members of any society or congregation which may hereafter be formed for the purpose aforesaid, to receive by gift, devise or purchase, a quantity of land not exceeding ten acres, and to erect or build thereon, such houses and buildings as they may deem necessary for the purposes aforesaid, and to make such other use of the land, and make such other improvements thereon as may be deemed necessary for the comfort and convenience of such society or congregation; and such society or congregation may assume a name and elect or appoint any number of trustees, not exceeding ten, who shall be styled trustees of such society or congregation by the name assumed; and the title to the land purchased and improvements made, shall be vested in the trustees, by the name and style assumed as aforesaid.

SEC. 45. Immediately after the election or appointment of trustees by any society or congregation as aforesaid, the persons elected or appointed, shall make a certificate under their hands and seals, stating the date of their election or appointment, the name of the society, or congregation, and the length of time for which they were elected or appointed, which shall be verified by the affidavit of some one of the persons making the same, and shall be recorded by the recorder of the county in which such society or congregation may be formed, and the said trustees shall hold their office for and during the period stated in the certificate aforesaid. And at the expiration of their term of service and forever thereafter, at the expiration of the term of service of any trustee elected or appointed as aforesaid, the said society or congregation shall elect or appoint successors, who shall, in like manner, continue in office for such period as may be limited by the society or congregation, and a certificate of their election or appointment shall be made by the trustees whose term of service shall have expired which shall be verified by affidavit, and recorded as provided in the election or appointment of trustees in the first instance.

SEC. 46. The trustees elected or appointed under the provisions of this division and their successors, shall have perpetual succession and existence, and the title to land herein authorized to be purchased, and to the buildings and improvements thereon, shall be vested in the said trustees by their assumed name, and their successors forever; and the same shall be held for the uses and purposes herein named and no other; and such trustees shall be capable in law, to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended,

in all courts of law or equity whatsoever, in and by the name and style assumed as aforesaid; and shall have power, under the direction of the society or congregation, to execute deeds and conveyances of and concerning the estate and property herein authorized to be held by such society or congregation; and such deeds or conveyances shall have the same effect as like deeds or conveyances made by natural persons: *Provided*, That no deed or conveyance shall be made of any estate held as aforesaid, so as to defeat or destroy the interest or effect of any grant, donation or bequest which may be made to any such society or congregation, but all grants, donations and bequests shall be appropriated and used as directed by the person or persons making the same.

SEC. 47. Every society or congregation formed as aforesaid, shall have power to provide for filling vacancies which may happen in the office of trustee, and also to remove trustees from office, and to adopt such rules and regulations in relation to the duties of trustees, and the management of its estate as the members may deem proper, not inconsistent with the constitution and laws of this State or the United States.

SEC. 48. Upon the dissolution of any society or congregation formed under the provisions of this division, the estate and property of such society or congregation shall revert back to the persons, their heirs and assigns, who may have given or contributed to the purchase of, or payment for the same, according to their respective rights. A failure to elect or appoint trustees at any time when, by the provisions of this division such election or appointment should be had, shall not work a dissolution of the society or congregation, but the trustees last elected or appointed, shall be considered as in office until another election or appointment shall take place.

SEC. 49. The provisions of this division shall be deemed and taken to apply to real estate heretofore acquired and now held by religious societies or congregations, so as to vest such societies or congregations, or their trustees with the rights and powers herein conferred over real estate hereafter acquired: *Provided*, That such rights and powers shall not be exercised until the provisions of this division shall have been complied with.

DIVISION IV. LIBRARIES.

SECTION

- 50. Five or more persons may associate and establish library, elect trustees, &c.
- 51. Elections, how held; certificate of elections to be filed; fee of clerk.
- 52. Any debating or literary society may organize, without subscribing funds.
- 53. Trustees; powers, liabilities and duties of corporation.
- 54. Trustees may purchase and hold real estate; amount limited.

SECTION

- 55. Term of office of trustees; officers appointed.
- 56. Meetings of stockholders, to elect officers; accounts to be submitted to meeting of members.
- 57. Meetings of trustees, when held.
- 58. Members may sell shares in library.
- 59. Trustees may make by-laws.
- 60. Payments of fees by members.
- 61. Election may be held on any day.

SECTION 50. Any number of persons, not less than ten, who shall associate themselves together, and subscribe, in the whole, not less than one hundred dollars, may assemble at any time and place upon which a majority of such subscribers shall de-

termine to elect and appoint not less than three, nor more than seven of their number as trustees, to take charge of the moneys belonging to the corporation thereby erected, and to transact all affairs relative to the same.

SEC. 51. The said election, to be held as aforesaid, shall be conducted in the following manner, to-wit: That whenever two-thirds of the subscribers shall assemble at the time and place previously agreed on, they shall proceed to choose a chairman from among themselves, who shall preside at such election, receive the votes of the subscribers, and be the officer to return the names of those who, by plurality of voices, shall be elected trustees of said corporation; the said returning officer shall certify under his hand, the names of the persons elected trustees for said library, in which certificate the name and style of the corporation shall be particularly described; which certificate shall be filed in the office of the clerk of the county commissioners' court; and at the next term of said court after such filing, the clerk thereof shall copy the same upon the records of the proceedings of the said court; for doing which he shall receive a fee of fifty cents and no more.

SEC. 52. Any debating or literary society may organize according to the provisions of this division, without having subscribed one hundred dollars, and may form its own constitution and by-laws, and regulate its own proceedings without appointing trustees, or any other than such officers as may be proper; and when so organized shall receive all the benefits conferred by this division.

SEC. 53. The persons so elected shall be trustees for said library, and the said trustees and their associates, and such other persons as shall, from time to time, become members of such corporation, shall be one body corporate and politic, in fact and in name, by the name, style or title mentioned in said certificate, so to be filed and entered on record as aforesaid, and by that name shall have succession; and they and their successors shall be capable in law to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended, in all courts of law or equity whatsoever; and they and their successors shall have a common seal, and may alter and change the same at their discretion.

SEC. 54. The said trustees and their successors, by the name and style described in said certificate, shall be capable in law of purchasing, holding and conveying any estate, real or personal, for the use of said corporation: *Provided*, Such real and personal estate, so held, shall not at any one time exceed the annual value of six hundred dollars, exclusive of the books and the annual payments which shall be made by the members of the said corporation.

SEC. 55. The trustees shall hold their offices one year, and until others be elected in their places, and shall manage the business of the said corporation; and there shall be one chairman of said trustees, one treasurer and one librarian; and it shall be lawful for the said trustees, whenever they conceive it necessary, to appoint one and the same person treasurer and librarian.

SEC. 56. A general meeting of the members of the corporation shall be held once in each year, for the election of officers, who shall be chosen by a plurality of votes; and any person holding more than one right in said library, shall be entitled to one vote for each right he or she shall hold in the same; the trustees of said library shall, annually, at their first meeting on or after the day that their offices commence, appoint one of the said trustees their chairman; and in case of the death, removal, refusal or neglect to serve, of the chairman for the time being, it shall be lawful for the trustees of the said library, at any of their meetings, to appoint another chairman, instead of the one dying, removing, refusing or neglecting to serve

as aforesaid, to remain in office till the expiration of the time during which his predecessor was entitled to serve; and when any vacancy shall happen, by the death, removal, resignation or neglect to serve, of any of the said trustees, it shall be lawful for the chairman of the said trustees, or on his neglect or refusal, for any other two of the said trustees, to summon a meeting of the members of said corporation at a place fixed by the by-laws of said corporation, for the purpose of electing other person or persons instead of such as shall have so died, removed, refused or neglected to serve as aforesaid; and such person or persons so to be chosen trustee or trustees, at such meeting as last aforesaid, shall respectively remain in office during such time as the person in whose stead such trustee shall be chosen, would have done in case such death, removal or refusal had not happened, and no longer; and the trustees of the said library shall at every such annual meeting of the members of the said corporation, exhibit to the members, a state of the said library, the minutes of the proceedings of the trustees during the year immediately preceding, with the treasurer and librarian's accounts, stating the amount of the receipts and expenditures during such year.

SEC. 57. The said trustees shall have stated meetings in every quarter in every year, at such time and place as shall, from time to time, be appointed for that purpose; and the chairman, or any two trustees of said library, for the time being, may, from time to time, as occasion requires, call together at such place as shall, from time to time, be appointed by the by-laws of said corporation, the trustees of said library, giving them at least two days previous notice of such meeting; and the chairman and a majority of the said trustees shall form a board of trustees, and in the absence of the chairman, the trustees so met shall choose another to serve on that occasion; the chairman shall have a casting vote and no other; the chairman and a majority of the trustees so met, shall have authority to adjourn from time to time, as the business of said corporation may require; and from time to time, to appoint, at their pleasure, or displace, a treasurer or librarian of the said library, and to appoint other or others in their stead; to ascertain the compensation to be allowed to the treasurer or librarian, or either of them, for their services in their stations respectively, and to appoint to them their respective powers, trusts and duties; to direct the application of moneys belonging to the said corporation, to the purchase of such books and apparatus as they shall think proper; to the providing a room or house for the safe keeping of the books of the said library; and to do, in the name of the said corporation, all and every act and acts, thing and things whatsoever, which shall be necessary to be done, and which the trustees of the said library are by this law authorized to do; and to make, at all times hereafter, such laws and regulations for the government of the officers and members of said corporation; for regulating the terms upon which the books of the said library shall be lent out, both to the members of said corporation or to others; for fixing and ascertaining the times and places in the quarterly meetings of the said trustees; for allowing and fixing the places of meeting of the members of said corporation; for the election of trustees; for regulating the management and disposition of the books of the said library, and the moneys, funds and effects belonging to the said corporation; the mode of transferring rights in the said library from one person to another; and all the other business of the said corporation, as they or the major part of them, so legally met, shall judge best for the general good of said corporation; and for the more effectual promoting, increasing and preserving the said library; and the same or any of them to alter or repeal from time to time, as they or a major part of them,

so met, shall think proper: *Provided*, Such laws and regulations shall not be repugnant to the laws of this State.

SEC. 58. It shall be lawful for each and every of the members for the time being of the said corporation, his or her executors, administrators and assigns, to give, sell, devise and dispose of their respective rights in the said library, and their respective assignees shall be members of said corporation, and shall be entitled to all the same rights and privileges in said corporation as the original members are entitled to by this division: *Provided*, That a part of a right in said library shall not entitle the proprietor or owner thereof, to any privilege whatever in said library or corporation.

SEC. 59. It shall be lawful at such meeting of a majority of said trustees of the library for the time being, to make any by-laws, constitutions or ordinances of the said corporation, to admit under the common seal of the said corporation, such and so many persons, members of said corporation, as they shall think beneficial to said library; which members so admitted, shall be entitled to have, hold and enjoy, all and every the same rights and privileges as the original members are entitled to by this division.

SEC. 60. Each member of such corporation for the time being, shall, on or before the first Tuesday in the month fixed for the election of trustees, annually pay to the treasurer of said library for the use of said corporation, the sum or sums which shall be fixed by the by-laws of said corporation; and whenever any of the members of the said corporation shall neglect to pay the said annual sum, or any other sum which shall of right become due to the corporation, for the space of fifty days next after the day on which the same ought to have been paid, then the person or persons from whom the same shall be due, shall be precluded from exercising any of the privileges to which he became entitled by virtue of his being or becoming a member of the said corporation, until such sums shall be fully satisfied; and if such sums shall not be paid within two years after any such sums shall become due as aforesaid, then, and after the expiration of two years from the time such payment shall become due, the person or persons from whom the same shall become due, shall thereupon forfeit and be utterly excluded from all his, her, or their rights and privileges in the said library and incorporation.

SEC. 61. In case it shall happen that an election of trustees should not be made on any day, when pursuant to this division, it ought to have been made, the said corporation shall not for that cause be deemed to be dissolved, but that it shall be lawful on any other day, to hold and make an election of trustees, in such manner as shall have been regulated by the laws and ordinances of the said corporation.

DIVISION V. FIRE COMPANIES.

SECTION

62. Forty or more persons may organize fire companies; may make by-laws.
63. To be body politic and corporate; powers, &c., of corporation.

SECTION

64. Fines, how recovered and applied.
65. Exemption from militia duty while member of fire company, and after serving in fire company twelve years.

SECTION 62. It shall be lawful for any number of persons, resident within any town or corporation within this State, exceeding forty persons, to form themselves into a company or companies, for the purpose of extinguishing fires, who on having their names and subscriptions recorded in the recorder's office in the proper county, are hereby authorized to make such rules and regulations as to a majority of said company or companies may seem proper and necessary for the procuring of engines, buckets, hooks, ladders, and all implements necessary for working said engines and exercising the companies: *Provided*, No by-law shall be contrary to the laws of this State.

SEC. 63. So soon as such persons shall have had their names and subscriptions recorded as aforesaid, they and their successors shall be, in law and in fact, a body corporate and politic, to have continuance forever, by the name and style of "The

Fire Company;" and by such corporate name and style, shall be forever able and capable in law and in equity, to sue and be sued, implead and be impleaded, answer and be answered, defend and be defended, in all manner of suits, actions, complaints, pleas, causes, matters and demands of whatever kind and nature they may be, in as full and effectual a manner, as any person or persons, bodies corporate and politic may or can do.

SEC. 64. All fines and forfeitures for non-attendance or delinquency, imposed by the by-laws and regulations to be adopted by the companies provided for by this division, not exceeding twenty dollars, shall be recoverable by action of debt, before any justice of the peace of the proper county, by the said company in their corporate capacity, which said fines and forfeitures, shall be for the use of the company suing for the same.

SEC. 65. All persons who shall form themselves into fire companies, as is provided in this division, shall be exempt from militia duty during the time they belong to such company; and all persons who shall have served twelve years in succession in any such fire company, shall, forever after, be exempt from doing militia duty in this State, except in time of war.

APPROVED: March 3, 1845.

CHAPTER XXVI.

COSTS.

SECTION

1. Bond for costs required, in what cases; nature and form of bond.
2. If suit commenced without bond, suit to be dismissed at cost of plaintiff's attorney; if plaintiff become non-resident or unable to pay, after commencement of suit, bond may be required, and on refusal to file one, suit may be dismissed.
3. If plaintiff be poor person.
4. When plaintiff has judgment in matter personal to himself, he shall have costs.
5. In what case defendant may have costs.

SECTION

6. If plaintiff in replevin be non-suited, defendant may have costs.
7. Costs on overruling demurrer.
8. Costs when pleas adjudged insufficient.
9. When counts in declaration insufficient, costs to be awarded.
10. One, of several defendants in *tort*, on acquittal, shall recover costs.
11. Costs on *scire facias*.
12. How many witnesses may have costs.
13. When there is irregularity or failure to prosecute, defendant may have costs.

SEC. 4. If any person shall sue in any court of this State in any action, real, personal or mixed, or upon any statute for any offence or wrong immediately personal to the plaintiff, and shall recover any debt or damage in such action, then the plaintiff or demandant shall have judgment to recover costs against the defendant to be taxed; and the same shall be recovered together with the debt or damages by execution, except in the cases hereinafter mentioned.

SEC. 5. If any person shall sue in any court of record of this State, any action, wherein the plaintiff or demandant might have costs in case judgment be given for him, and he be *non-pros'd*, or suffer a discontinuance, or be *non-suited* after appearance of the defendant, or a verdict pass against him, then the defendant shall have judgment to recover his costs against the plaintiff, (except against executors or administrators prosecuting in the right of their testator or intestate,) or demandant to be taxed, and the same shall be recovered of the plaintiff or demandant, by like process as the plaintiff or demandant might have had against the defendant, in case judgment had been given for such plaintiff or demandant.

SEC. 6. Any person making avowry, justification or cognizance in replevin, if the same be found for him, or the plaintiff be *non-suited* or *non-pros'd*, suffer a discontinuance, or be otherwise barred, then such person shall recover his damages and costs against the plaintiff, in like manner as the plaintiff would have done, if the same had been found against the defendant.

SEC. 7. If, in any action, judgment upon any demurrer, by either party to the action, shall be given against the plaintiff or demandant, the defendant shall recover costs against the plaintiff or demandant. If such judgment be given for the plaintiff or demandant he shall recover costs against the defendant; and the person so recovering costs, shall have execution for the same.

SEC. 8. Where any defendant in any action, or plaintiff in replevin, shall plead several matters, and any of such matters, upon demurrer joined, shall be adjudged insufficient, or if a verdict shall be found, in any issue of the cause, for the plaintiff or demandant, costs shall be given at the discretion of the court.

SEC. 9. Where there are several counts in any declaration, and any one of them be adjudged insufficient, or a verdict on any issue joined thereon, shall be found for the defendant, costs shall be awarded in the discretion of the court.

SEC. 10. Where several persons are made defendants to any action of trespass, assault, false imprisonment, detinue, replevin, trover or ejectment, and any one or more of them shall, upon the trial, be acquitted by verdict, every person so acquitted shall recover his costs of suit, in like manner as if such verdict of acquittal had been given in favor of all the defendants.

SEC. 11. In all suits upon any writ of *scire facias*, or upon prohibition, the plaintiff obtaining judgment, or an award of execution, after plea pleaded, or demurrer joined therein, shall recover his costs of suit; if the plaintiff shall be *non-suited*, *non-pros'd*, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs.

SEC. 12. In no case in the circuit court shall the fees of more than four witnesses be taxed against the party against whom judgment shall be given for costs, unless the court shall certify on their minutes, that more than four witnesses were really necessary; in which case the clerk shall tax the costs of as many witnesses as the court shall so certify.

SEC. 13. In all cases, where any action shall be dismissed for irregularity, or be *non-pros'd* or *non-suited*, by reason that the plaintiff neglects to prosecute the

same, the defendant shall have judgment for his costs, to be taxed, and have execution therefor.

SEC. 14. In all suits and actions commenced or to be commenced for and on behalf of the people of this State, or the Governor thereof, or for or on behalf of any county of this State, or in the name of any person for the use of the people of this State or any county, then and in every such case, if the plaintiff or plaintiffs shall recover any debt or damages in such action or suit, the plaintiff or plaintiffs shall recover costs as any other person in like cases; but if such plaintiff or plaintiffs suffer a discontinuance, or be *non-suited* or *non-pros'd*, or verdict pass against such plaintiff or plaintiffs, the defendant shall not recover any costs whatever. Nothing in this section contained shall extend to any popular action, nor to any action to be prosecuted by any person in behalf of himself and the people or a county, upon any penal statute.

SEC. 15. Upon the complainant dismissing his bill in equity, or the defendant dismissing the same for want of prosecution, the defendant shall recover against the complainant full costs; and in all other cases in chancery, not otherwise directed by law, it shall be in the discretion of the court to award costs or not; and the payment of costs, when awarded, may be compelled by execution.

SEC. 16. When any suit shall be commenced in the name of one person, to the use of another, the person to whose use the action is brought shall be held liable and bound for the payment of all costs which the plaintiff may be adjudged or bound to pay, to be recovered by action on the case.

SEC. 17. In all cases of appeal or *certiorari* upon the judgments of justices of the peace, when the judgment of the justice of the peace shall be wholly affirmed or reversed, the party succeeding shall recover from the opposite party his costs, not only in the circuit court but before the justice of the peace, and shall have his execution therefor: where the judgment of the justice of the peace shall be affirmed in part, then the court shall divide the costs between the parties, according to the justice of the case.

SEC. 18. In all cases of appeal from the decision of a court of probate, the costs shall be in the discretion of the circuit court.

SEC. 19. If any person shall sue out a writ of error, or take an appeal to the supreme court, to review the judgment of the circuit court, and the same judgment be affirmed, or the writ of error be discontinued or quashed, or the plaintiff in error or appellant be non-suited, the defendant in error or appellee shall recover his costs, and have execution therefor; and if the judgment be reversed, the appellant or plaintiff in error shall recover his costs, and shall have execution therefor, as in other cases.

SEC. 20. In every such case, if the judgment or decree be affirmed in the whole, the party prosecuting such writ of error or appeal shall pay to the opposite party a sum not exceeding ten per centum on the amount of the judgment or decree so attempted to be reversed, at the discretion of the court, and in addition to the costs, shall have judgment and execution therefor: *Provided*, the supreme court shall be of opinion that such appeal or writ of error, was prosecuted for delay.

SEC. 21. Where such judgment or decree shall be reversed in part, and affirmed in part, the costs shall be apportioned between the parties, according to the discretion of the supreme court.

SEC. 22. The clerk of any court in this State is hereby authorized and required to tax and subscribe all bills of costs arising in any cause or proceeding institu-

ted in the court of which he is clerk, agreeably to the rates which shall, for the time being, be allowed or specified by law; and shall in no case allow any item or charge unless he shall be satisfied that the service for which it was made was actually performed in the cause.

SEC. 23. If any person shall feel himself aggrieved by the taxation of any bill of costs by the clerk, he may apply to the court in which the action or proceeding was had to retax the same, according to law. If the said court shall find any charge allowed for services not performed, or for which the person charged is not liable, or any item charged higher than by law is allowed, then the court shall correct such taxation; and if the party aggrieved shall have paid such unlawful charge, the clerk shall forfeit all fees allowed to him for taxation; and shall pay to the party aggrieved the whole amount which he may have paid by reason of the allowing of such unlawful charge.

SEC. 24. In all cases where either party shall be adjudged to pay costs before final judgment, by reason of setting aside, a *non-suit*, default or *non-pros*?, or the granting of a continuance or new trial, or otherwise, and in all cases where there is security for costs, or attorney liable for costs, or an action brought to the use of another, and the plaintiff shall be adjudged to pay the costs, either before or upon final judgment, it shall be lawful for the clerk to make out and tax a bill of costs so adjudged to be paid, against the party adjudged to pay the same, and against his security for costs, or other person liable for the payment thereof, or either of them, and certify the same under the seal of the court, which being delivered to the sheriff of the proper county, he shall demand payment from the person therein charged; if payment shall not be made accordingly, within thirty days after such demand, the sheriff shall levy the same on the goods and chattels, lands and tenements of the person so chargeable, and proceed therein in all things as on a writ of *feri facias*.

APPROVED: March 3, 1845.

CHAPTER XXVII.

COUNTIES AND COUNTY COMMISSIONERS' COURTS.

SECTION

1. Counties to be bodies politic; names; corporate powers.
2. County commissioners' courts.
3. Commissioners, how elected; how sworn.
4. Terms of office determined by lot.
5. Terms to be one, two and three years, as lots shall designate.
6. Two preceding sections apply only to first elections of county commissioners; subsequent elections, how conducted; regular term to be three years.
7. How vacancies may be filled; *proviso*.
8. Clerk of county commissioners' court to be elected once in four years.
9. Clerk shall keep his office at county seat; shall be sworn; shall give official bond.

SECTION

10. For what causes clerk may be removed.
11. When office of clerk becomes vacant, *pro tempore* appointment may be made, until vacancy be filled.
12. How vacancy may be filled.
13. Clerk refusing at the close of his term to deliver books, &c., to his successor, may be punished by fine and imprisonment; liability on official bond not impaired by infliction of punishment.
14. Deeds, &c., made or to be made for the use of any county, valid.
15. County court may appoint commissioner to sell real estate of county.
16. All bonds, made to any person for use of coun-

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- ty, valid to vest title in county; suit may be brought thereon, in whose name.
- 17 County commissioners may appoint agent to contract for erecting buildings, whose acts shall be valid.
 18. Suits against county may be commenced in circuit court of same county; copy of summons to be left with clerk; time of service and return; inhabitants of county sued, may be witnesses.
 19. County commissioners shall take proper measures for prosecuting and defending suits.
 20. When judgment is recovered against a county, commissioners shall provide for its payment.
 21. Counties on the Mississippi and Wabash rivers, have jurisdiction to State line.
 22. Sessions of county commissioners' court, how often and when held.
 23. Quorum; if no quorum, may adjourn.
 24. Special session, how called and held.
 25. Extent of jurisdiction and power of county commissioners' courts.
 26. Official seals to be procured.
 27. Process, &c., to be sealed; how entitled; how executed and returned, and by whom.
 28. Court may enforce orders, &c., by attachment.
 29. Not to have jurisdiction of suits at law, but only of county business; may punish for contempt; compensation of clerks.
 30. Fines, &c., collected by justices and other officers, to be paid into county treasury.
 31. Officer failing to pay over to forfeit seventy-five

SECTION

- dollars, for use of county; officer to have notice.
32. Compensation of county commissioners.
 33. Which commissioner shall preside.
 34. County commissioners' courts shall erect jails, and make report thereof to the circuit court.
 35. Shall erect court houses.
 36. May purchase lands on which to erect county buildings.
 37. May lease vacant rooms in court houses.
 38. Shall have custody of court houses.
 39. When county divided, line not to be within ten miles of county seat.
 40. No county to contain less than four hundred square miles.
 41. County commissioners to make out statement of fiscal concerns; same to be posted up in clerk's office; penalty for neglecting, how recovered.
 42. Appeals may be taken; proceedings in such cases.
 43. Circuit courts, how to proceed in trial of such appeals; written opinion to be made out, on decision of such cases.
 44. Fire proof recorders' offices to be erected; rooms in court house may be used, if fire proof.
 45. Fire proof clerks' offices.
 46. County orders to be countersigned by county treasurer, and record thereof made.
 47. Treasurer shall examine vouchers before countersigning orders.

SECTION 1. Each county which has heretofore been, or may hereafter be established in this State, according to the laws thereof, shall be a body politic and corporate, by the name and style of "The county of _____;" and by that name may sue and be sued, plead and be impleaded, defend and be defended against in any court of record, either in law or equity, or other place where justice shall be administered.

SEC. 2. There shall remain, as at present established, in each county of this State, and shall be established in each county hereafter created, a court of record, to be constituted, composed of three commissioners, elected by the people as hereinafter provided, to be styled "the county commissioners' court of _____ county."

SEC. 3. Such commissioners shall be elected as provided in chapter thirty-seven (title "ELECTIONS,") of the Revised Statutes. Previous to entering upon their duties they shall be sworn, before some justice of the peace, judge of the circuit court or clerk of the circuit court, faithfully to perform the duties of their office to the best of their knowledge and ability.

SEC. 4. At the first meeting of such commissioners after they shall have been so elected and sworn, the clerk of said county commissioners' court, shall prepare three tickets, upon one of which he shall write the words "one year," upon another the words "two years," and upon the other the words "three years," which tickets so prepared shall be presented by said clerk with the writing thereon concealed, to such county commissioners, and each of said commissioners shall draw one of said tickets.

SEC. 5. The term of service of the commissioner who draws the ticket upon which is written "one year," shall expire at the end of one year; the term of service of the commissioner who draws the ticket upon which is written "two years," shall expire at the end of two years; and the term of service of the commissioner who draws the ticket upon which is written "three years," shall expire at the

end of three years; the result of which drawing shall be entered by the clerk upon the records of the court.

SEC. 6. The two preceding sections shall be deemed to apply only to commissioners elected at the first elections to be held in counties hereafter to be organized. Thereafter in all such new counties, as well as in all counties now organized according to law, one commissioner shall be elected at the general election in each year as provided in chapter thirty-seven, (title "ELECTIONS,") to supply the place of the commissioner whose term of office shall then expire: it being intended that after such first election, each commissioner shall hold his office for the term of three years.

SEC. 7. Whenever a vacancy shall happen in the office of county commissioner by death, resignation or otherwise, it shall be the duty of the clerk of the county commissioners' court of the county in which the vacancy shall happen, to issue his order to the judges of election in the different precincts in said county, requiring them on a certain day not less than twenty days from the date of such order, to hold an election to fill such vacancy: *Provided*, That if the term of service of the commissioner whose vacancy is to be filled, would have expired within six months of the happening of said vacancy, it shall not be necessary for the clerk to order an election to fill such vacancy.

SEC. 8. There shall be elected in each county, a county commissioners' clerk, who shall hold his office four years, and until his successor is elected and qualified. In counties hereafter to be organized, they shall be elected at the first election of county commissioners, and in like manner every four years thereafter. In counties now existing they shall be elected at the periods and in the order of time by law established.

SEC. 9. Each clerk so elected and qualified shall keep his office at the place of holding court for each county respectively; and each and every clerk before he enters on the duties of his office, shall take an oath to support the constitution of the United States and of this State, and the oath of office, in open court, and enter the same on record, and give a bond with good securities to the county commissioners, to be approved by them for the use of any person or persons injured, or for the use of the county if injured, in the penal sum of one thousand dollars, conditioned for the faithful performance of the duties of his office.

SEC. 10. The county commissioners' court of any county, may, for misconduct in office, gross neglect of duty, incompetency, or other good cause shown, to be entered upon the record of their said court, remove their clerk, whose office shall be considered vacant.

SEC. 11. Whenever, by reason of death, resignation, removal, or any other cause, the office of clerk shall become vacant, the court may appoint a clerk, *pro tempore*, who shall perform the duties of such office until such vacancy shall be filled.

SEC. 12. Such vacancy shall be filled in the same manner as is provided in section seven of this chapter, for filling vacancies in the office of county commissioner.

SEC. 13. Every clerk who shall refuse or neglect, after going out of office, to deliver to his successor in office, all papers, books, moneys, and all and every thing appertaining to his office, shall forfeit and pay any sum not over five hundred dollars, and be imprisoned any time, not exceeding thirty days, at the discretion of the court before which he may be tried: such forfeiture and payment to be inde-

pendent of, and in nowise discharging or diminishing the obligation of his official bond.

SEC. 14. All deeds, grants and conveyances, heretofore made, or which shall be hereafter made, and duly acknowledged and recorded, as other deeds conveying any lands, tenements or hereditaments, to any county or the inhabitants of any county and their successors, or to the county commissioners, or to the county commissioners' court, or to the governor, or any other person or persons by whatever form of conveyance, for the use and benefit of any county, shall be good and valid to all intents and purposes, to vest in such county in fee simple or otherwise, all such right, title, interest and estate as the grantor or grantors in any such deed or conveyance had at the time of the execution thereof, in the lands conveyed, and was intended thereby to be conveyed.

SEC. 15. The county commissioners' court may, by their order to be entered on their minutes, appoint a commissioner to sell and dispose of any real estate of their county, and the deed of such commissioner, under his proper hand and seal, for and in behalf of such county, duly acknowledged and recorded, shall be sufficient to all intents and purposes, to convey to the purchaser or purchasers, all the right, title, interest and estate whatever, which the county may then have in and to the premises, so to be conveyed.

SEC. 16. All notes, bonds, bills, contracts, covenants, agreements or writings made, or to be made, whereby any person or persons, is, are or shall be bound to any county or the inhabitants thereof, or the county commissioners, or county commissioners' court, or to the governor, or any other person or persons, in whatever form, for the payment of money, or any debt or duty, or the performance of any matter or thing to the use of any county, shall be as valid and effectual to all intents and purposes, to vest in the said county all the rights, interest and actions, which would be vested in any individual, if any such contract had been made directly to him: suits may be commenced, sued and prosecuted thereon in the name of said county, as is provided in the first section of this chapter, or in the name of the person to whom they are made, to the use of the county, as fully and effectually to all intents and purposes, as any person may or can upon like notes, bills, bonds, contracts, agreements or writings made to him.

SEC. 17. The county commissioners' court may appoint an agent or agents, to make any contract on behalf of such county for erecting any county building, or for any other purpose authorized by law. The contracts of such agent or agents, duly executed for and on behalf of such county, shall be valid and effectual to bind such county to all intents and purposes.

SEC. 18. All actions, local or transitory, against any county, may be commenced and prosecuted to final judgment and execution in the circuit court of the county against which the action is brought. Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment, in the county in which the defendant in such action resides. When any action shall be commenced against any county, a copy of the summons shall be left with the clerk of the commissioners' court, either during the sitting of said court, or so as a term of said court shall intervene between the day of leaving a copy of such summons and the return day thereof. There shall always be ten days between the service and return of every such summons. In all actions brought by or against every county, the inhabitants of the county so suing, or being sued, may be jurors or witnesses, if otherwise competent or qualified according to law.

SEC. 19. It shall be the duty of the county commissioners' court of each of the counties of this State, to take and order suitable and proper measures for the prosecuting and defending of all suits to be brought by or against their respective counties.

SEC. 20. When any judgment shall be rendered against any county, it shall be the duty of the county commissioners' court to order a warrant to be drawn on their treasurer for the amount of the judgment and costs; which warrant shall be paid as other county debts. Nothing herein contained shall authorize any execution to be issued against lands or other property of any county of this State.

SEC. 21. All the counties of this State, or which shall hereafter be erected, which are or shall be bounded, or which may front on either the Mississippi or Wabash rivers, shall respectively have and exercise jurisdiction upon such rivers so far as the counties shall respectively be bounded by the rivers aforesaid; which jurisdiction shall be exercised concurrently by the counties aforesaid, with the contiguous States and territories bounded by said rivers, so far and to such extent as the said rivers shall form the boundary of the counties aforesaid respectively; and also the boundary between this State and contiguous States or territories.

SEC. 22. There shall be four sessions of the county commissioners' court in each county in this State, to be holden at the usual place of holding courts, or at the office of the clerk, to commence on the first Mondays of March, June, September and December of each year, and continue six days, if the business shall not be sooner completed.

SEC. 23. Two commissioners shall constitute a quorum to do business. Should a quorum not meet at any stated meeting of the said court, then the said court shall be considered to be continued by law from day to day, if necessary, until four of the clock in the afternoon of the second day, and then if a quorum be not present for said court, the business therein to stand continued to the next court in course.

SEC. 24. Should it be necessary to have a called court on any urgent business, then any one of the county commissioners shall have power to call said court, on giving the other two commissioners five days previous notice, and the clerk, before said special term of said court. Said special court shall have the same power and authority as when holding a stated court.

SEC. 25. The said courts shall have jurisdiction throughout their respective counties in all matters and things concerning the county revenue, and regulating and imposing the county tax, and shall have power to grant licenses for ferries and for taverns, and all other licenses and things that may bring in a county revenue; and shall have jurisdiction in all cases of public roads, canals, turnpike roads and toll bridges, where the law does not prohibit the said jurisdiction of said courts; and shall have power and jurisdiction to issue all kinds of writs, warrants, process and proceedings by the clerk, throughout the State, which are necessary to the execution of the power and jurisdiction with which such courts are or may be vested by law.

SEC. 26. It shall be the duty of the county commissioners in each county, as soon as practicable, to cause to be procured, all the necessary official seals that may be requisite in their respective counties; and they shall be, and are hereby authorized, to draw on the county treasurer for the expense of any such seal or seals, which shall be paid for in the same manner as other county debts are paid.

SEC. 27. The said court of each county shall have a judicial seal; and all warrants, writs, process and proceedings to be issued by said court, shall be sealed with said seal, bearing date the time they issue, and be signed by the clerk of said

court. All such process shall run "*In the name of the people of the State of Illinois,*" and may be executed and returned as other process, by the sheriff or any constable of the county.

SEC. 28. The said court of each county respectively, shall have power and jurisdiction to compel and enforce by writ or writs of attachment, or other process, the orders, decrees or judgments of said courts respectively.

SEC. 29. There shall be nothing contained or construed in this chapter, to give the said court any original or appellate jurisdiction in civil or criminal suits or actions, wherein the State is a party, or any individual or individuals, bodies politic or corporate, are parties; but said court shall have jurisdiction in all cases where the matter or thing brought before the said court relates to the public concerns of the county collectively, and all county business: and the said court shall have power to punish for contempts, as other courts may do, and have all the power necessary to the right exercise of the jurisdiction with which said court is or may be vested according to law; and the clerks of said courts respectively, shall have the same fees, emoluments and perquisites of office, as are given to the other clerks of courts of this State by law, for the like services, or as may be given them by law.

SEC. 30. It shall be the duty of justices of the peace, and of all other officers, to account for, and pay over to the county commissioners' court of the county within which such officer shall reside, at or before the December term of the said court, in each and every year, all sums of money recovered by fine, penalty or otherwise, which by law is required to be paid into the treasury of the several counties in the same kind of funds received by them.

SEC. 31. Any officer failing to comply with the foregoing section, shall forfeit and pay the sum of seventy-five dollars, with any money by him not accounted for and paid over as aforesaid, to be recovered by motion before the circuit court of the county wherein default is made, for the use of said county, together with the costs of said motion: *Provided*, That the officer against whom the motion is made shall have notice thereof at least ten days before the first day of the term at which such motion is made.

SEC. 32. There shall be allowed to each county commissioner in full for his services for each day's attendance in holding courts, the sum of one dollar and fifty cents, to be paid on the certificate of the clerk, out of any moneys in the treasury of the county, not otherwise appropriated.

SEC. 33. That commissioner who shall be oldest in commission shall preside at all meetings of the court.

SEC. 34. It shall be the duty of the county commissioners' courts, in their respective counties, to prepare or cause to be erected, when, in the opinion of said court, the means of the county are such as to justify it, and where they have not heretofore done so, strong and substantial jails, so that prisoners may be confined therein with safety: and the said commissioners are hereby expressly charged with the faithful execution of this law, and they shall make report thereof respectively, to the circuit court, at the next term in the county after the same shall have been done, and said report shall be entered upon the records of the said circuit court.

SEC. 35. It shall also be the duty of the said county commissioners, in each county, to cause to be erected, when, in the opinion of said court, the means of the county are such as to justify it, a suitable court house in each of their respec-

tive counties; and they shall have power to enter into contracts from time to time, with any person or persons, in behalf of the county, for the erection of such court houses, or finishing any court house already begun, at any regular term of their court, or at any special term they may appoint.

SEC. 36. The county commissioners' courts in each county, shall have power to contract for and procure, for the use of their respective counties, whenever it shall become necessary, any lot or lots of land, whereon to erect such county buildings, and obtain deeds of conveyance to such counties, and to sell and convey the same when it shall become necessary, to any purchaser or purchasers, in the manner prescribed by law.

SEC. 37. The county commissioners' courts of any county in this State are hereby authorized to lease such vacant room or rooms as offices, as may be in the court house of said counties and not occupied by and furnished for the sheriff, clerk of the circuit court, clerk of the county commissioners' court, and probate justice of the peace of said counties, for any term not exceeding one year, and for such rent or rents as they may think right and proper.

SEC. 38. The county commissioners of said counties shall have the care and custody of said court houses; any law or usage to the contrary notwithstanding.

SEC. 39. Hereafter, in all cases of division of any county in this State, by petition or otherwise, it shall not be lawful to establish any boundary line within less than ten miles of the seat of justice of the county to be divided.

SEC. 40. Hereafter, no county in this State shall be curtailed in its limits so as to reduce the territory to less than four hundred square miles, nor shall any county be created hereafter, the territory of which shall contain less than four hundred square miles.

SEC. 41. It shall be the duty of the commissioners' court of each county to cause a complete statement in writing of the fiscal concerns of the county to be made out at their March term, annually, which shall specify the amount of money paid out of the county treasury during the preceding year, to whom paid, and for what purposes; and likewise the amount of the county orders issued and unredeemed during the same year; and the clerk of said court shall keep said statement posted up in his office for the period of one month at least, from the end of said term; and for failing to perform this duty, he shall pay a fine of ten dollars. Each county commissioner who shall neglect to cause such statement to be made out, shall also pay a fine of ten dollars, to be recovered by action of debt, at the suit of any individual, before any justice of the peace of the county; one-half for the use of the county, and the other half with costs of suit, for the use of the person so suing.

SEC. 42. Any party to a proceeding had before any county commissioners' court, who may feel aggrieved by the final decision, judgment or order of such court, shall be allowed to appeal to the circuit court of the county in which the decision, judgment or order may have been made: *Provided*, The appeal be prayed during the term of the court at which the decision, judgment or order may be rendered: *And, provided further*, That the party praying appeals shall be required to execute bond, with good security, to be approved by the court, payable to such person, and with such conditions as the court shall require; and after the execution of the appeal bond, the clerk of the commissioners' court shall file with the clerk of the circuit court, a full and complete transcript of the record and proceedings of the court, together with the appeal bond, and all original papers relating to the case; and the

clerk of the circuit court shall thereupon issue a summons against all parties interested in the decision, judgment or order appealed from, as in cases of appeals from judgments of justices of the peace, and if a county be interested, the summons shall issue against the county commissioners of such county.

SEC. 43. The circuit courts shall have jurisdiction to hear and determine all such appeals, and shall give such judgment in respect to the rights of the parties, as the commissioners' court should have given, and shall have power to make all such orders, and to issue all such process and notices as may be necessary to bring all persons interested before the court; and on the trial of such appeals, the court shall proceed in all respects as is or may be required in the trial of other appeal cases in said court; and the judgment of the court in the premises, shall be final and conclusive upon the parties, unless an appeal be taken to the supreme court. The said circuit court shall also have power to remand all such cases to the county commissioners' court, with directions to carry into effect, so far as relates to rights of parties, the judgment of said court: *Provided*, That in cases so remanded, the circuit court shall make out and deliver a written opinion to be entered of record, and transmitted to the county commissioners' court.

SEC. 44. The county commissioners' courts of the several counties in this State, are hereby authorized and required, whenever the finances of any county in this State shall justify such expenditure, to cause to be erected a fire proof recorder's office, on some suitable lot at their respective county seats, and pay for the same in the same manner as court houses and jails are paid for: *Provided*, That if the county commissioners' court of any county as aforesaid shall be of opinion that any one of the rooms unappropriated in their court houses respectively can be made fire proof, they shall be required and authorized as aforesaid to cause such improvements or additions to be made to any such room as will render the same fire proof; in which said fire proof buildings or room, the records and office of county recorder shall be kept.

SEC. 45. The provisions of the foregoing section may, at the discretion of the county commissioners' court of any county in this State, be deemed to apply to the offices of clerks of the county commissioners' and circuit courts, respectively.

SEC. 46. In all cases when orders for money are issued by the clerk of any county commissioners' court, in any county of this State, upon the treasurer of such county, the said orders, before they are delivered to the person or persons for whose benefit the same is or are drawn, shall be severally presented by the clerk to the said treasurer, who shall personally countersign the same; and shall also enter in a book, to be kept for that purpose, the date, amount and number of each of said orders, and the name or names of the person or persons in whose favor such orders are drawn respectively.

SEC. 47. No county treasurer shall countersign any county order before the same is filled up, nor until he shall examine the records of the court, and be satisfied that the order to be issued is warranted by the order of the county commissioners' court.

APPROVED: March 3, 1845.

CHAPTER XXVIII.

COUNTY TREASURERS AND COUNTY FUNDS.

SECTION

1. County treasurer elected once in four years; how and when elected in new counties.
2. To take oath of office; form of oath.
3. Shall file bond; form thereof.
4. Treasurer of each county shall keep books of account; entries therein.
5. Shall keep account of moneys paid out; books open to inspection.
6. No money to be paid out, but by order of court, or as directed by law.
7. To report to county commissioners' court at each term; particulars to be reported.
8. Clerk shall file reports, &c.
9. Clerk shall not receive money.
10. Money not considered paid, until received by the treasurer; treasurer to give receipts.
11. Court shall settle with treasurer at June and December terms.
12. If treasurer be in default, to be dismissed from office and sued.

SECTION

13. Embezzlement of public funds declared to be felony; how punished.
14. Court shall publish fiscal statement annually.
15. Court may call on treasurer at any time for a settlement.
16. If treasurer speculate in funds, how examined; may be dismissed.
17. If treasurer be dismissed, office, how filled.
18. If county officer neglect duty, he may be punished by fine, &c.
19. If sheriff, &c., refuse to pay over money collected, office to be vacated.
20. When, by whom, and in what manner office of defaulters declared vacant.
21. Collectors of revenue not to speculate in Auditor's warrants.
22. How punished therefor; penalty, how collected and applied.
23. Duty of county treasurers when orders are presented, to keep list thereof, &c.

SECTION 1. There shall be elected in each county of this State, a county treasurer, who shall hold his office four years and until his successor is elected and qualified. In counties hereafter to be organized, they shall be elected at the first election of county commissioners, and in like manner every four years thereafter. In counties now existing, they shall be elected at the periods and in the order of time by law established.

SEC. 2. Each county treasurer, previous to entering on the duties of his office, shall take and subscribe the following oath, to-wit: "I, A. B., treasurer of the county of _____, in the State of Illinois, do solemnly swear, (or affirm) that I will honestly and faithfully pay over to the proper officers and individuals authorized by law to receive the same, any and all current money, and other funds that may come into my possession by virtue of my office as treasurer of the county of _____, and that I will not, directly or indirectly, exchange, lend or use any portion thereof, for the purpose of speculation, or will I appropriate or apply any portion thereof, to my own use or benefit, or for the use or benefit of another, and that I will faithfully and impartially, and to the best of my skill and judgment, perform the duties required of me by law as treasurer of the county of _____ A. B.

Sworn to and subscribed before me this _____ day of _____, 18 _____.

C. D., Justice of the peace for _____ county."

SEC. 3. Each county treasurer, before he enters upon the duties of his office, shall also execute a bond, in such penalty and with such security as the county commissioners shall deem sufficient; which bond shall be in substance in the following form, to-wit: "Know all men by these presents, that we, A. B., principal, and C. D., and E. F., securities, all of the county of _____ and State of Illinois, are held and firmly bound to the people of the State of Illinois, in the penal sum of _____ dol-

lars, for the payment of which well and truly to be made, we bind ourselves, each of us, our heirs, executors and administrators, firmly by these presents: Signed with our hands, and sealed with our seals. Dated at the day of 18 . The condition of the above bond is such, that if the above bounden A. B. shall perform all the duties required by law to be performed by him, as treasurer of the said county of in the time and manner prescribed by law; and when he shall be succeeded in office, shall surrender and deliver over to his successor in office, all books, papers, moneys and other things belonging to said county, and appertaining to his said office, then the above bond to be void, otherwise to remain in full force.

Signed, sealed, and delivered }
in presence of G. H." }

A. B. [SEAL.]
C. D. [SEAL.]
E. F. [SEAL.]

SEC. 4. The county treasurers of the several counties in this State, shall each of them keep a book, in which they shall keep a regular, just and true account of all moneys and revenues received by them respectively, stating therein particularly in what kind of funds each particular sum was received, whether in gold, silver, county orders or any other funds authorized to be received as revenue, by the laws of this State. They shall also keep a regular, just, and true account of the time when, of whom, and on what account each particular sum in money, or other funds, may have been received by them.

SEC. 5. They shall also keep a regular, just and true account of all moneys and funds paid out by them agreeably to law, stating therein particularly on what account each particular sum was paid out, to whom paid, the particular kind of money or funds paid out to each individual, and the time when such payment was made. The books and accounts aforesaid to be free for the inspection of any individual who may wish to examine the same.

SEC. 6. No money, county orders or other funds, shall hereafter be paid out of any county treasury in this State, except in accordance with an order or decree of the county commissioners' courts respectively, or by virtue of a law specifically directing such payment to be made.

SEC. 7. It shall be the duty of the treasurers of each and every county to report to the county commissioners' courts of their respective counties, at the regular terms of said courts, the amount of money, county orders, or other public funds, in their possession; also, the amount of money, county orders and other public funds received by them since their last reports. They shall also state in said reports, the amount they may have received from each and every source of revenue, by whom, on what account, in what kind of funds, and at what time the same may have been paid into the treasury. The said treasurers shall also report to the county commissioners' courts of their respective counties, at the regular terms of said courts, regular, just and true accounts of all payments out of the treasury, stating particularly at what time, on what account, in what kind of funds, and to whom each particular sum was paid out.

SEC. 8. The clerks of the county commissioners' courts of the several counties in this State respectively, shall number, file, and carefully preserve the reports mentioned in the eighth section of this chapter and the said reports shall be free for the inspection of any individual who may wish to examine the same.

SEC. 9. No clerk of any county commissioners' court in this State shall receive any money claimed by or due to either of the counties of this State, from any source whatever, whether on account of revenue, costs or fines, or from mer-

chants, grocers, tavernkeepers, showmen, peddlers or ferry licenses, or from any other source whatever.

SEC. 10. No claim of any county, whether for revenue, costs or fines, or for merchants, grocers, tavernkeepers, showmen, peddlers or ferry licenses, or from any other source whatever, shall be considered as having been paid and satisfied until the money or other funds shall have been paid to the treasurer of such county, and his duplicate receipts had therefor, which receipts shall specify the kind of money or other funds in which the payments shall have been made; one of which receipts shall be presented to the clerk of the county commissioners' court of the proper county, which said clerk shall number, file and carefully preserve the same in his office, which aforesaid duplicate receipts, it shall be the duty of the treasurer to give to any person who shall pay into the county treasury any money or other funds as aforesaid.

SEC. 11. The county commissioners' court of each and every county in this State shall, at their June and December terms in each year, settle with their county treasurer, and count the funds then in the treasury of their county; and the clerk of said court shall then enter on the records of said court the amount and kind of funds found to be in the treasury at the time.

SEC. 12. Should the treasurer, at any such settlement, prove a defaulter, and be actually in arrears with the county, the county commissioners shall immediately dismiss him from office, and commence suit against him on his official bond.

SEC. 13. If any State or county officer, school commissioner, or any other person charged by law with having the possession and the safe-keeping of any public money, auditor's warrants, county orders or other funds belonging to the State, or to any county in the State, or in any way pertaining to the school funds or any county or township therein, shall convert to his own use, in any way whatever, or shall use, by way of investment in any kind of property or merchandize, or for his own use shall loan, with or without interest, any portion of the public moneys, auditor's warrants, county orders, or any other funds intrusted to him for safe keeping, disbursement, transfer or for any other purpose, every such act shall be deemed and adjudged an embezzlement of so much of said moneys, auditor's warrants, county orders or other funds, as shall be thus taken, converted, invested, used or loaned, which is hereby declared to be a felony. Any officer of the State, or of any county, or of any township, and all persons advising or participating in such act, being convicted thereof before any court of this State of competent jurisdiction, shall, in case the sum so embezzled, taken, converted, invested, used or loaned, be less than fifty dollars, be fined in a sum not exceeding two hundred dollars, or imprisoned in the jail of the proper county not exceeding three months, or both, at the discretion of the court before which such conviction shall be had; and in case the sum so embezzled, taken, converted, invested, used or loaned, shall exceed fifty dollars, then the said officer or other person so convicted, shall be fined in a sum double the amount of the sum so embezzled, taken, converted, invested, used or loaned, and confined in the penitentiary not exceeding ten years, nor less than one year: *Provided, however,* That this chapter shall not be so construed as to extend to any public officer or agent who shall loan any school or other fund, in pursuance of any of the laws of this State.

SEC. 14. The county commissioners' courts of this State shall publish annually, at their June terms, in a newspaper, if one is printed in the county, a full and perfect statement of the financial affairs of their respective counties, and if a newspaper

is not published in said county, then the clerks of said courts shall post the same up in their respective offices, which shall be kept there for the inspection of all persons, at all reasonable hours, who may desire to examine the same.

SEC. 15. The county commissioners' court of any county in this State may, at any time when any two of them think it for the interests of the people of their county so to do, call through their clerk upon the treasurer of their county for a settlement, and should said treasurer neglect or refuse to appear and make settlement as notified to do, said commissioners shall declare his office vacant, and proceed upon his bond as required to do in this chapter.

SEC. 16. Should the county commissioners' court of any county in this State be of opinion that the treasurer of their county has at any time used the funds of said county when current, and replaced the same in depreciated funds, they shall have the power to examine said treasurer under oath as touching said transaction, and if it shall appear that he has parted with any current funds belonging to the county, and replaced the same with funds less valuable, they shall immediately dismiss him from office.

SEC. 17. Should any county treasurer be dismissed from office pursuant to the provisions of this chapter, it shall be the duty of the county commissioners' court to appoint some suitable person to fill the vacancy so occasioned, and the person so appointed, shall give bond and security as now required by law of county treasurers, and shall perform all the duties enjoined upon the county treasurer until one is elected and qualified.

SEC. 18. If any clerk, county commissioner or treasurer of any county in this State, shall neglect or refuse to perform any of the duties required of them by this chapter, they shall severally forfeit a sum of not less than fifty dollars, and not exceeding one thousand dollars, according to the nature and aggravation of the offence, to be recovered by indictment in the circuit court of the proper county, or by action of debt by any person who shall sue therefor, one-half to the person suing, and the other half to the proper county.

SEC. 19. Whenever any sheriff, coroner, constable, justice of the peace or probate justice of the peace in this State, shall, after proper demand made, fail, neglect or refuse to pay over any sum or sums of money collected or received by such officer, in and by virtue of his office, his said office shall be forfeited and vacated.

SEC. 20. Whenever in pursuance of the laws of this State, any judgment shall be had or taken, against any sheriff, coroner, constable, justice of the peace, or probate justice of the peace, for any failure, neglect or refusal of such officer, to pay over any sum or sums of money collected or received by him, in and by virtue of his office, and it shall appear to the satisfaction of the court, that proper demand for the same has been made, it shall be the duty of the court, or justice of the peace before whom such judgment is had or taken, further to adjudge and decree that the office of such officer, so failing, neglecting or refusing, as aforesaid, is forfeited and vacated, and such vacancy shall be filled as in other cases of vacancy, as is now provided by law.

SEC. 21. The collectors of the State revenue in the several counties in this State, shall receive auditor's warrants in payment of any or all taxes due the State, in their respective counties, at par, and they shall not be permitted to take, buy, share or receive, directly or indirectly, by themselves or agent, any auditor's warrant or warrants, at less than the full sum due thereon, to the holder of such warrant or warrants.

SEC. 22. For any violation of the provisions of the preceding section by any collector or collectors aforesaid, he or they shall be liable to double the amount so made by purchasing or sharing said warrants, at less than their face, in an action of debt, before any justice of the peace or court of record of the proper county. One half of all sums so collected to go to the person complaining, and the other half to go to, and form a part of the school fund of the county where such collector may reside.

SEC. 23. It shall be the duty of the county treasurer, of any county in this State, whenever any county order is presented for payment, to indorse on the back of any such order, the time when the same was presented for payment; and it shall also be the duty of the said treasurer, to set down in a book to be kept by him for that purpose, the amount and date of all such county orders, to whom made payable, and the time when presented to the said treasurer for payment; and all county orders shall be paid according to their original dates; and it shall be the duty of the county treasurer, whenever any money comes to his hands, to set apart the amount of the order presented as aforesaid, which money shall be kept by the treasurer until called for; and the said treasurer, when he goes out of office, shall deliver said book, containing a list of the county orders so presented, to his successor, who shall in all things act as though the entries of orders were made by himself.

APPROVED: March 3, 1845.

CHAPTER XXIX.

COURTS.

SECTION

1. Supreme court, composed of a chief justice and eight associates; how chosen.
2. One session of supreme court in each year.
3. To be held at the Seat of Government, unless, &c.
4. Five justices constitute a quorum; decisions to be by a majority.
5. Justices to take oath; who may administer it.
6. May make rules of practice, &c., chief justice shall examine clerk's office annually.
7. Appellate jurisdiction; general powers.
8. If no quorum, or court fails to sit, may adjourn from day to day.
9. Chief justice and associate justices shall hold circuit courts; when one is unable to hold court another may supply his place.
10. Causes pending when court adjourns, may be continued.
11. Process, how tested, signed and sealed, and how returnable.
12. How process may be executed; power of court to punish for contempts.
13. Original jurisdiction of supreme court, in case of public officers; if bond of officer be defective, may proceed against officer, and compel him to account, and may give judgment;

SECTION

- party to have notice; attorney general to prosecute.
14. Supreme court may appoint clerk; may remove him for cause; cause of removal to be entered of record.
15. Duty of clerk to issue process; keep record; shall be sworn; shall keep his office at the Seat of Government; shall give bond; its condition; bond to be filed in secretary's office.
16. Parties in circuit court may make agreed case, and submit same to supreme court.
17. Judge, if parties agree, may certify case to the supreme court; or, case may be certified by counsel; proceedings thereon in the supreme court.
18. Two preceding sections not to apply to suits respecting real estate.
19. Opinions delivered in supreme court to be delivered in writing, filed and recorded.
20. Court shall appoint reporter.
21. Reporter shall be sworn; may, for cause, be removed from office.
22. Reporter shall deliver sufficient number of reports to secretary of State, for distribution and for State library.
23. Reports, how distributed.

SECTION

24. Reports, how paid for.
25. Court may make rules of practice.
26. Salary of judges.
27. Vacancies when occurring during session of General Assembly, how filled; when during recess, how filled.
28. When judge does not attend circuit court on the first day of term, what proceedings had.
29. Judges to reside in respective circuits; powers.
30. Power of judges, as to issuing process.
31. Power to hear cases of treason, felony, &c.
32. Suits, where tried.
33. Clerks of circuit courts to be sworn.
34. Shall give bond, which shall be filed in office of secretary of State.
35. Clerks shall keep their offices at county seats; duties generally.
36. Their fees.
37. Judge may, for cause to be entered of record, remove clerk; removal of clerk not to discharge obligation of official bond.
38. Clerk going out of office, to deliver papers, &c., to successor; on refusal, compulsory process may be used.
39. Judges shall examine clerks' offices annually.
40. Clerks of circuit courts may issue process; how tested, dated, signed and sealed.
41. Judges may hold courts for each other; their powers in such cases.
42. If judge fail to attend circuit court, how causes continued.
43. Judges of circuit courts may appoint special term for the hearing of chancery cases; powers in such cases; may appoint term for hearing of civil and criminal cases; jury, how summoned.
44. If judge be interested, cause transferred to another circuit.
45. If person in custody for crime desires a trial, how to proceed.

SECTION

46. Duty of sheriff in such case; penalty for neglect; when no such special term shall be ordered.
47. How court shall proceed in such cases.
48. How process issued in such cases, shall be executed; power of courts to punish contempts, &c.
49. Clerks may issue subpoenas to any county.
50. Judges may, in vacation, appoint special term; proceedings in such cases.
51. Circuit court of Sangamon county to have original jurisdiction in cases in which State is plaintiff.
52. Suits to be brought in the name of the people, &c.
53. Attorney general may, on his official statement, without oath, cause writs to be issued in behalf of the State.
54. State not required to give bond.
55. Sheriffs, &c., throughout State to obey such writs; how defendants may be arrested and held to bail.
56. Defendants may recover costs against the State; how paid.
57. State officers to give notice of any delinquency to attorney general, who shall prosecute forthwith.
58. Duty of attorney general to enforce penalties of criminal code against officers guilty of embezzlement.
59. Official statements of officers to be evidence.
60. Process, may go to any county; fees, &c.
61. Causes how docketed; other courts of the State to have concurrent jurisdiction.
62. Process, by what officer served.
63. Construction of twelve preceding sections.
64. Sheriff of county in which supreme court is held, shall attend its sittings.
65. State to remain divided into nine judicial circuits; judges to hold courts therein, &c.

SECTION 1. There shall remain, as at present established, a supreme court, to be composed of one chief justice and eight associate justices, to be chosen and continued in office in manner and for the term provided in article fourth of the constitution.

SEC. 2. The supreme court shall hold one session in each year, to commence on the second Monday in December, and continue in session until all the business before it is disposed of.

SEC. 3. The sessions of the supreme court shall be held at the seat of government, unless by reason of pestilence or any other public calamity, the justices thereof shall see fit to change the same until the cause of such removal shall cease.

SEC. 4. Five of said justices shall constitute a quorum for business; and all questions submitted for decision shall be determined by a majority of the justices present at the hearing.

SEC. 5. The chief justice and associate justices of the supreme court, previously to entering upon the duties required of them by law, shall, in addition to the oath to support the constitution of the United States and of this State, take the following oath of office: "I, A. B., chief justice (or associate justice, as the case may be,) of the supreme court do solemnly swear, (or affirm) that I will administer justice, without respect to persons, and do equal right to the poor and to the rich, without sale or denial, promptly, without delay, conformably to the laws, without favor, affection, or partiality, to the best of my judgment and abilities;" which oath or affirmation may be administered by any justice of the peace in this State; a certificate whereof shall be indorsed by the person administering the same, on the back of the commission of such judge, and another certificate thereof filed in the office of the secretary of State.

SEC. 6. The said supreme court may, from time to time, institute such rules of practice, and prescribe such forms of process to be used, and for the keeping of the dockets, records and proceedings, for the regulation of the said court, as shall be deemed most conducive to the due administration of justice; and it shall be the duty of the chief justice to examine the state of the clerk's office of the said court annually, and make report thereof to the next term of the court which shall be noted in the proceedings.

SEC. 7. The said supreme court shall exercise appellate jurisdiction only, (except as is hereinafter excepted) and shall have final and conclusive jurisdiction of all matters of appeal, error or complaints from the judgment or decrees of any of the circuit courts of this State, and from such other inferior courts as may hereafter be established by law in all matters of law and equity, wherein the rules of law or principles of equity appear, from the files, records or exhibits of any such court, to have been erroneously adjudged and determined. And the said supreme court is hereby empowered, authorized and enabled to take cognizance of all such causes as shall be brought before it in manner aforesaid, and shall be vested with all the power and authority necessary for carrying into complete execution all its judgments, decrees and determinations in the matters aforesaid, according to the laws, customs and usages of this State, and according to the rules and principles of the common law; and its judgments, decrees and determinations shall be final and conclusive on all the parties concerned.

SEC. 8. If there shall not be a quorum of the justices of the said supreme court present, on the first day of any term, the court shall stand adjourned from day to day, until a quorum shall attend; and if, from any cause, the supreme court shall not sit on any day in a term after it shall have opened, there shall be no discontinuance, but so soon as the cause is removed, the court shall proceed to business until the end of the term, or until the business depending before it shall be disposed of.

SEC. 9. The chief justice and associate justices of the said supreme court, shall hold circuit courts as is herein provided for by law; and when either of the said judges shall, by death, resignation, removal from office or unavoidable absence, fail to attend and hold any of the circuit courts required of him by law, it shall be the duty of one of the other judges presiding in either of the other circuits, upon receiving information that such courts will not be holden, to attend in the said circuit, so situated, and hold courts therein, and exercise all the powers and jurisdiction, both in term time and vacation, that the judge assigned by law to such circuit could legally do, until the causes aforesaid, which authorize and require such judge to exercise such power and jurisdiction in such circuit, shall be removed.

SEC. 10. If the said supreme court, or any of the circuit courts directed to be held by this chapter, shall not sit in any term, or shall not continue to sit the whole term, or before the end of the term shall not have heard and determined all matters and causes depending in said courts, all matters and causes depending and undetermined, shall stand continued until the next succeeding term.

SEC. 11. All process which shall be issued from the said supreme court, shall bear teste, in the name of the chief justice, be signed by the clerk, dated when issued, and sealed with the seal of the court; and all such process shall be made returnable according to law, or such rules and orders as may be prescribed by the court.

SEC. 12. Any process which may be issued from the said supreme court or any justice thereof, or the clerk, according to law, shall be executed by the officer

or person to whom it shall be directed in any county or place in this State, in the usual manner that process is or may be required to be executed and returned. The said court shall have power to punish contempts offered by any person to it while sitting, and for disobeying any of its process, rules and orders issued or made conformably to law.

SEC. 13. The supreme court shall have original jurisdiction in all causes, suits and motions against public debtors, sheriffs, clerks and all collectors of the public revenue to the State, of every denomination whatsoever; and in all cases where it may have been or may hereafter be the duty of any sheriff, clerk, collector or receiver of public moneys for the State, to make collections and settlements with the proper authority: if he or they have failed to do so or shall hereafter fail to do so and there shall appear any defect in the bond given by said officer or person or other proceeding, sufficient to exempt from liability the security or securities of such officer or person, or to defeat the ordinary proceedings against himself, the court shall have power to compel such person, whether in or out of office, who has either collected public money, or ought to have done so, to exhibit upon oath a full and fair statement of all moneys by him collected, and a list of all persons, as far as it may be practicable to obtain the same, of whom such person had a right to collect, and who had failed to pay him accordingly; and the court shall, upon hearing the whole case, without regard to form, have power to give such judgment for such sum or sums of money as such person ought to be liable to pay, according to the true spirit of the law and the principles of equity: *Provided*, That the person or persons as aforesaid shall have due and reasonable notice of the time of proceeding against him or them as aforesaid; and it shall be the duty of the attorney general to attend and prosecute the same.

SEC. 14. The supreme court, or a majority of the justices thereof, shall appoint a clerk of said court, and may remove him from office at pleasure, for neglect of duty, mal-conduct in office, incompetency to perform the duties thereof, or for any other cause which shall be satisfactory to said court, or a majority thereof. The cause of such removal shall be entered upon the records of said court.

SEC. 15. It shall be the duty of the clerk of the supreme court, to issue process in all cases where process ought to be issued from the said court; and to keep and preserve complete records of all the decisions and proceedings of the said court: he shall, before he enters upon the duties of his office, take the following oath or affirmation before one of the justices of the supreme court: "I, A. B., being appointed clerk of the supreme court, do solemnly swear, (or affirm) that I will truly and faithfully enter on record all the orders, decrees, judgments and proceedings of the said court, and that I will faithfully and impartially discharge and perform all the duties of my said office, according to the best of my abilities and understanding according to law;" and the said clerk shall keep his office at the seat of government, and shall do and perform all such acts and things as are or may be enjoined on him, and be entitled to such compensation as is or may be provided by law. And he shall, at the first term of said court after he shall be appointed, give bond to the Governor of this State and his successors in office, for the use of the people of the State, with one or more securities, to be approved by the said court, in the sum of three thousand dollars, conditioned for the faithful discharge of his duties, and to deliver up all moneys, papers, books, records and other things, appertaining to the same, whole, safe and undefaced, when lawfully required so to do; which bond so executed as aforesaid, shall be filed in the office of the secretary of State.

SEC. 16. The parties in any suit or proceeding at law, or in chancery, in any circuit court, may make an agreed case containing the points of law at issue between them, and file the same in the said court; and the said agreed case may be certified to the supreme court by the clerk of such circuit court, without certifying any fuller record in the case; and upon such agreed case being so certified and filed in the supreme court, the appellant or plaintiff in the error may assign errors, and the case shall then be proceeded in in the same manner as it might have been had a full record been certified to said supreme court.

SEC. 17. Any judge of a circuit court may, if the parties litigant assent thereto, certify any question or questions of law arising in any case tried before him, to the supreme court, together with his decision thereon; or the parties in the suit may agree as to the questions or points of law arising in the case, and the same may be certified by the counsel or attorneys of the respective parties, who shall sign their names thereto; and upon such certificate being made, the same shall be filed in the circuit court, and a copy of such certificate certified by the clerk of said circuit court to the supreme court, and filed therein; and upon filing the same, the like proceedings may be had in the supreme court as if a full and complete record had been transcribed and certified to said court.

SEC. 18. The two preceding sections shall not apply to cases in which the title to real estate is in question.

SEC. 19. In the decision of cases submitted to the supreme court, the opinions of the justices shall be delivered in writing, and filed with the other papers. Such opinions shall also be spread at large upon the records of the court.

SEC. 20. The court shall appoint some person learned in the law to minute down and make report of all the principal matters, drawn out at length, with the opinion of the court, in all such cases as may be tried before the said court; and the said reporter shall have a right to use the original written opinion after it shall have been recorded by the clerk.

SEC. 21. The reporter, before entering upon his duties, shall be sworn by some one of the justices of the supreme court, faithfully to perform the duties of his said office. He may, for misconduct in office, neglect of duty, incompetency, or other cause shown, to be entered of record, be removed from office.

SEC. 22. It shall be the duty of the reporter to deliver to the secretary of State, as soon as convenient after publication, such number of copies of the respective volumes of the reports of said court, as may be necessary to enable the said secretary to distribute the same in the manner provided in the following section, together with one hundred copies in addition, to be deposited in the secretary's office for the use of the State.

SEC. 23. It shall be the duty of the secretary of State to distribute the said reports, in the manner following, to-wit: He shall deliver one copy to each of the justices of the supreme court; one copy to the attorney general, each State's attorney, and to each clerk of a court of record in this State, except the supreme court; one copy to each probate justice, and five copies to the clerk of the supreme court; one copy to the executive of each State in the United States, and five copies to the executive of the United States; and one copy to each of the officers of the executive department of this State, who are required to keep their offices at the seat of government.

SEC. 24. Upon the delivery of the requisite number of any volume of said reports, it shall be the duty of the secretary of State to deliver to said reporter, a

certificate, specifying the number of copies of said reports, which shall have been delivered to him; and on presentation of said certificate to the auditor of public accounts, he shall issue his warrant upon the treasury for such an amount as said volumes shall amount to, at the price for which said books shall be sold to individuals: *Provided*, Said price shall not exceed the ordinary price of law books of the same description, to be determined by the auditor, treasurer and secretary of State.

SEC. 25. The supreme court shall have power, from time to time, by general rules, to establish, modify, alter and amend the practice in the said court, in matters not provided for by statute.

SEC. 26. Each justice of the supreme court shall receive a yearly salary of fifteen hundred dollars, payable quarterly out of the public treasury.

SEC. 27. When any of the said judges shall die, resign, remove from the State, become incompetent or be removed from office, during the session of the General Assembly, his successor shall be chosen as provided in article four of the constitution; if such vacancy occur or exist during a recess of the General Assembly, it shall be filled by appointment of the Governor; the person so appointed to continue in office until the close of the ensuing session of the General Assembly, and until his successor shall be appointed and qualified.

SEC. 28. If there shall be no judge attending in any county, on the first day of any term, the court shall stand adjourned from day to day until a judge shall attend, if that should happen before the hour of four o'clock in the afternoon of the second day; but if no judge shall have attended before that time, the court shall stand adjourned until the next succeeding term.

SEC. 29. The chief justice and the associate justices of the supreme court, shall be required to reside in the circuits assigned them respectively; and the said circuit courts shall be holden at the respective court houses of said counties, and the said judges respectively, in their respective circuits shall have jurisdiction over all matters and suits at common law and in chancery, arising in each of the counties in their respective circuits, where the debt or demand shall exceed twenty dollars.

SEC. 30. The said judges shall be conservators of the peace, and the said courts in term time, and the judges thereof in vacation, shall have power to award throughout the State, and returnable in the proper county, writs of injunction, *ne exeat*, *habeas corpus*, and all other writs and process, that may be necessary to the due execution of the powers with which they are or may be vested.

SEC. 31. The said courts shall respectively have power and authority to hear and determine all cases of treason and other felony, crimes and misdemeanors of whatever kind, that may be committed within any county or place within their respective circuits, and that may be brought before them, by any rules and regulations provided by law.

SEC. 32. All suits brought in the said circuit courts shall be tried in the counties in which they originated, unless in cases that are or may be specially provided for by law.

SEC. 33. The clerks appointed by the said circuit courts, or by the judges thereof in each county, shall, before they enter upon the duties of their offices, respectively take an oath, to support the constitution of the United States, and of this State, and also the following oath of office, before one of the judges of the said circuit courts, or some justice of the peace in this State: "I, A. B., being appointed clerk of the circuit court for _____ county, do solemnly swear, (or affirm) that I will truly and faithfully enter and record all the orders, decrees, judgments and proceedings of the said court; and that I will faithfully and impartially dis-

charge and perform all the duties of my said office, according to the best of my abilities and understanding, according to law." A certificate whereof, with the appointment, shall be entered on the records of the court at the first term of the court after the same shall be done.

SEC. 34. The clerk of each circuit court shall, at the first term of the said court held in his county after he shall be appointed, enter into bond to the governor of the State, and to his successors in office, for the use of the people of the State of Illinois, with one or more securities to be approved by the court, in the sum of two thousand dollars, conditioned for the faithful performance of the duties of his office, and to deliver up the papers, books, records and proceedings appertaining thereto, whole, safe and undefaced, when lawfully required so to do; which bond, so executed, shall be transmitted to the office of the secretary of State, and filed therein.

SEC. 35. The clerks of the respective circuit courts, shall keep their offices at the county seats of their respective counties; they shall make, keep and preserve complete records of all the proceedings and determinations of the courts, of which they are clerks, except in cases otherwise provided by law, and do and perform all other duties pertaining to their said offices, as may be required by law, or the rules and orders of their courts respectively.

SEC. 36. The clerks of the circuit courts shall be entitled to such fees and compensation for their services as shall be allowed by law, or by order of court.

SEC. 37. The clerk of any circuit court may be removed from office by the judge of said court, for any neglect of duty, incompetency, misconduct in office, or any other cause which may be satisfactory to said court; the reasons for such removal to be entered at large upon the records of said court. The official bond of such clerk shall not be affected by such removal, but shall remain in full force, for the satisfaction of any breach of its conditions.

SEC. 38. It shall be the duty of every clerk of the circuit court, hereafter to be appointed to succeed another, to demand of his predecessor, or the person in whose possession they may be, all the books, papers and proceedings appertaining to the circuit court of which he shall be appointed clerk: and the said predecessor or person in whose possession the same may be, shall, on such application and demand, deliver them up to the person so appointed; and should any person herein required to give up the books, papers and proceedings as aforesaid, refuse so to do on such application and demand, the proper circuit court shall have power to use such compulsory process, and take such measures as may be necessary to coerce the delivery as aforesaid, according to the true intent and meaning hereof.

SEC. 39. The judges shall annually examine into the condition of the office of every clerk of the circuit court in their respective circuits, and make such order thereon as circumstances may require.

SEC. 40. The clerks of the circuit courts may issue process in all cases arising therein; which process shall bear teste in the name of, and be signed by such clerks respectively, and dated on the days on which they issue, and be made returnable according to law; and all process issuing from the said circuit courts, shall be sealed with the judicial seal which shall be provided for that purpose; but in case there shall not be a judicial seal, the clerk shall affix his private seal until a public one shall be provided.

SEC. 41. The chief justice, and the associate justices of the supreme court, may interchange and hold each other's circuit courts as often as they may agree to do the same, and may award writs of *habeas corpus*, *ne exeat*, *certiorari* and *injunction*.

and may grant orders to stay proceedings, which said writs and orders shall run, and have force, in each other's circuits; and such acts, writs and orders shall have the same effect, and be obeyed in the same manner, as if the said acts, orders and writs were done, granted and sued by the proper justice or judge of the circuit.

SEC. 42. Should the chief justice or either of the associate justices fail to attend in any county, in their respective circuits, on the day appointed for commencing the term of the circuit court therein, as required by law, the court shall stand adjourned until the next day, and should the judge not attend by four o'clock in the afternoon of the second day of the term, the court shall stand adjourned until the next succeeding term of the court; and all suits, writs, process, indictments, recognizances and other proceedings, shall stand continued over until the next term of the court, as effectually as if the same had been continued by the order of the court.

SEC. 43. The said judges in their respective circuits, may, at any regular term of the court in any county, make an order appointing a time for holding a special term of the court, for hearing and deciding chancery causes, and shall have power at such special terms, to hear and decide all causes, matters and things depending in chancery in such courts; and all proceedings had, and all orders, decrees and judgments made at such special term, shall have the same validity as if had or made at a regular term appointed by law. The said judges shall also have power at any regular term of a circuit court in any county, to make an order appointing a time for holding a special term of such court, for the trial of civil and criminal causes; and suits may be instituted, and process made returnable to such special term in the same manner, and with like effect as at a regular term of such court; and the county commissioners of such county, shall select and cause to be summoned a grand and petit jury, to attend the special term appointed for the trial of civil and criminal cases; and the court shall have power at such special term to try all civil and criminal cases; and all orders, judgments and proceedings made and had at such special term, shall be as valid and effectual, as if made or had at a regular term of the court.

SEC. 44. If any judge of the circuit court shall be interested in any suit or proceeding in his circuit, it shall be his duty to cause all the papers relating to such suit or proceeding, and a transcript of the record, if necessary, to be transmitted to the most convenient county in the next adjoining circuit, as in case of a change of venue; and the judge of the circuit, to which such cause shall be transferred, shall proceed therein, in all respects, as if the same had been originally instituted in his circuit.

SEC. 45. Whenever any person shall be in the custody of the sheriff of any county, charged with a capital crime, or any felony, or other offence, punishable by confinement in the penitentiary, it shall be the duty of such sheriff, provided such person shall desire a trial, to give information thereof, in writing, to the judge presiding in the circuit, or in the case of his absence or disability, to the next circuit judge nearest to the county where the offence is charged to have been committed, whose duty it shall be to issue a precept, under his hand and seal, to the sheriff of such county, to summon twenty-three grand jurors, and twenty-four petit jurors, to attend at the seat of justice of said county on a day therein mentioned, which shall not be less than fifteen nor more than thirty days from the date of said precept.

SEC. 46. It shall be the duty of the sheriff, on receiving the precept aforesaid, to give notice by advertisement, set up at the seat of justice of his county, at least ten days before the return of such precept, of the time of holding a special term of

the circuit court, in pursuance of this chapter; and it shall be the duty of the circuit judge, either personally or in writing, to notify the attorney prosecuting for the State in such county, of the time and place of holding court in pursuance of this chapter; but the want of such advertisement by the sheriff, or notice by the judge, shall not be construed to invalidate the authority of the court, or to render its proceedings void or erroneous; but in case of such omission, the precept aforesaid shall be considered as legal notice of the time and place of holding such court; and the sheriff, for omitting to advertise in manner aforesaid, may be fined at the discretion of the court, in a sum not exceeding five hundred dollars: *Provided*, That there shall be no such special term of the circuit court, where a regular term of said court will be held within forty days of the time of receiving such notice as aforesaid, by the judges from the sheriff, but in all such cases the person shall wait until the regular term for his trial.

SEC. 47. The said circuit court, when met in pursuance of this chapter, shall have authority to adjourn to any day which may be adjudged reasonable and expedient, for the fair and impartial trial of any such person, who may be indicted before it, and in case the requisite number of grand and petit jurors shall not attend at the time and place specified in such precept, or the number of petit jurors be reduced by challenge below the number of twelve, the court may order the sheriff to complete the pannel of the grand or petit jury from the bystanders, or award a *venire de novo* for a grand or petit jury, as the case may require.

SEC. 48. Any process which may be issued by any of the clerks of the said circuit courts, or any judge thereof, in pursuance of law, shall be executed by the officer or person to whom the same shall be directed, in any county or place in this State, in the same manner that process usually is, or may be required to be executed, and returned; and the said circuit courts shall respectively have power to punish all contempts offered by any person or persons to them, while sitting as such, at any regular or special term as aforesaid; and for disobeying any of its process, rules or orders, issued or made conformably to law.

SEC. 49. The clerks of the several circuit courts may issue subpoenas for witnesses to any county in this State.

SEC. 50. The circuit judges of the several judicial circuits of this State, shall have power in vacation, and they are required to appoint a special term of the court in any of the counties comprising their respective circuits, whenever it may be necessary for the prompt and efficient administration of justice; and whenever any special court shall be held, the clerk of said court shall give the sheriff of said county notice in writing at least twenty days before said court is to be held, who shall summon a grand and petit jury, to attend at the court house on the day appointed for holding said court, and said sheriff shall put up notices of the time of holding such court, in at least five of the most public places in said county, and all process which may have been made returnable to the regular term, shall be deemed in law returnable to the said special term appointed as aforesaid.

SEC. 51. The circuit court of Sangamon county shall have original jurisdiction in all causes, suits and motions, against every person or persons, body politic or corporate in this State, in which the State shall be a party, plaintiff or complainant, whether such causes, suits and motions grow out of contracts express or implied, or out of *torts* of any nature or description whatever, affecting the interest or welfare of the State.

SEC. 52. All such suits, motions, causes and proceedings shall hereafter be instituted and prosecuted in the name of the People of the State of Illinois.

SEC. 53. Writs of *ne exeat*, *caapias*, attachment and injunction may issue in the causes, suits and proceedings aforesaid on behalf of the State, as in cases provided for by law between individuals, and such writs shall issue in all instances upon the official statement in writing of the attorney general, which statement shall conform to the law applying to the issuing of those writs in other cases, only dispensing with the oath or affidavit of the attorney general.

SEC. 54. The State shall in no case be required to give bond and security as is required of individuals in suing out such writs as aforesaid.

SEC. 55. It shall be the duty of the sheriffs and coroners throughout the State to obey the writs aforesaid, and serve the same in their respective counties; and whenever any person or persons by virtue of any such writs of *caapias* or *ne exeat*, shall be required to give bail or enter into bond or recognizance, for his, her or their appearance at the court aforesaid, as in other cases provided for by law: in default of giving bail, or entering into bond or recognizance, such person or persons shall be imprisoned in the county where he, she or they may be arrested, and there detained until he, she or they shall give such bail, or enter into such bond or recognizance, or be otherwise discharged by law; and in case he, she or they shall not be discharged from custody, the sheriff or coroner having him, her or them in custody, shall surrender him, her or them before the said court at the return day of such writ.

SEC. 56. Any person or persons, body politic or corporate, against whom any such suit, cause, motion or proceeding as aforesaid, shall be instituted and prosecuted, shall recover payment for his, her or their costs, which shall be paid by the State, and for which the clerk of said court shall certify the same to the auditor, and the auditor of public accounts shall issue his warrant for the same on the treasurer, in the event that such cause, suit, motion or proceeding shall be determined or disposed of against the State.

SEC. 57. It shall be the duty of the governor, secretary of State, treasurer, auditor and fund commissioner, to give immediate notice to the attorney general, of any delinquency or default of any person or persons, body politic or corporate, in any matter relating to the public revenue and public interests, growing out of contracts or *torts* as aforesaid, and it shall be the duty of the attorney general to proceed forthwith against such person or persons, body politic or corporate, in the most efficient manner allowed by law.

SEC. 58. It shall be the duty of the attorney general to enforce the penalties of the criminal code against all persons who may embezzle the public money, or who may be liable to prosecution for any delinquency or default pertaining to the public revenue in his district; and it shall be the further duty of the attorney general to give information and directions and instructions to the prosecuting attorneys of the State, of any such offences as above in other parts of the State out of his district, so that prosecutions may be instituted against such offenders.

SEC. 59. In all such suits, causes, motions and proceedings as aforesaid, the official statement of the governor, secretary of State, auditor, treasurer and fund commissioner, of any fact or facts, properly within the legitimate powers and duties of such officers, respectively, shall be deemed and taken as evidence for and against the State, as the case may be.

SEC. 60. All subpoenas, summonses, executions and other legal process in said suits, causes, motions and proceedings, shall issue and be directed to any county in the State, and be served as in other cases provided for by law; and the fees of the

clerks, witnesses, sheriffs, coroners and other officers, shall be the same as in other cases.

SEC. 61. The causes, motions, suits and proceedings aforesaid, shall be docketed in the court aforesaid, and tried and disposed of as other cases: *Provided*, That said court shall not have exclusive jurisdiction of such causes, motions and suits, but only concurrent jurisdiction with the other circuit courts of the State, where the defendant or defendants in said causes, motions and suits may happen to reside or be found.

SEC. 62. The sheriff or coroner of the proper county shall hereafter serve and return all writs and process issuing out of the supreme and circuit courts, unless otherwise provided for by law.

SEC. 63. The twelve preceding sections hereof shall not be construed as repealing any other law of this State, relating to the interests of the State, but the same shall be considered a cumulative remedy in the enforcement of public justice.

SEC. 64. The sheriff of the county in which the supreme court is held, shall attend upon its sittings, and perform such duties, under the order and direction of said court, as are usually performed by such officer, and such as said court shall from time to time require.

SEC. 65. The State shall remain as now, divided into nine judicial circuits, and the chief justice and eight associate justices, shall hold circuit courts therein, and shall perform all the duties prescribed in this chapter, in the manner and at the times by law specified, and perform such other duties as such judges, as shall hereafter be defined by law.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Acts No. 10, 11 and 12.]

CHAPTER XXX.

CRIMINAL JURISPRUDENCE.

DIVISION I. PERSONS CAPABLE OF COMMITTING CRIMES.

SECTION

1. Crime or misdemeanor, what constitutes.
2. Intention, how manifested.
3. Who capable of committing crimes.
4. Infant under ten years not capable.
5. Lunatic or insane not capable.
6. Idiot not capable.
7. Person counselling infant to commit offence, prosecuted as principal.
8. Married woman committing certain crimes under coercion of husband, not punishable, but husband punishable.

SECTION

9. Drunkenness not an excuse for crime, unless occasioned by the fraud of some other person, for the purpose, &c., in which case such person considered as principal.
10. Acts committed by misfortune not deemed criminal.
11. Person committing crime not punishable with death, under threats, not guilty; persons compelling commission of offence by such threats, liable as principal or principals.
12. Person becoming lunatic or insane after commission of crime, not to be tried during such

SECTION

lunacy; and if after verdict of guilty, and before judgment, such person become lunatic, then no judgment shall be given, and every person becoming lunatic, after judgment and

SECTION

before sentence, execution thereof to be stayed till recovery; question of insanity to be tried by jury.

SECTION 1. A crime or misdemeanor consists in a violation of a public law, in the commission of which there shall be an union or joint operation of act and intention, or criminal negligence.

SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offence, and the sound mind and discretion of the person accused.

SEC. 3. A person shall be considered of sound mind who is neither an idiot nor lunatic, nor affected with insanity; and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.

SEC. 4. An infant under the age of ten years, shall not be found guilty of any crime or misdemeanor.

SEC. 5. A lunatic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor, with which he may be charged: *Provided*, The act so charged as criminal, shall have been committed in the condition of insanity.

SEC. 6. An idiot shall not be found guilty, or punished for any crime or misdemeanor, with which he or she may be charged.

SEC. 7. Any person counselling, advising or encouraging an infant under the age of ten years, lunatic or idiot, to commit any offence, shall be prosecuted for such offence when committed as principal, and if found guilty, shall suffer the same punishment that would have been inflicted on such person counselling, advising or encouraging as aforesaid, had he or she committed the offence directly, without the intervention of such infant, lunatic or idiot.

SEC. 8. A married woman acting under the threats, command or coercion of her husband, shall not be found guilty of any crime or misdemeanor not punishable with death, provided it appear from all the facts and circumstances of the case, that violent threats, command or coercion were used; and in such case the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife, if she had been found guilty.

SEC. 9. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness be occasioned by the fraud, contrivance or force, of some other person or persons for the purpose of causing the perpetration of an offence; in which case the person or persons so causing said drunkenness, for such malignant purpose, shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offence, if he, she or they had been possessed of sound reason and discretion.

SEC. 10. Acts committed by misfortune or accident, shall not be deemed criminal, where it satisfactorily appears, that there was no evil design or intention, or culpable negligence.

SEC. 11. A person committing a crime or misdemeanor, not punishable with death, under threats or menaces which sufficiently show, that his or her life or member was in danger; or that he or she had reasonable cause to believe, and did believe that his or her life or member was in danger, shall not be found guilty: and such threats or menaces being proved and established, the person or persons compelling by such threats or manaces, the commission of the offence, shall be

considered as principal or principals, and suffer the same punishment, as if he or she had perpetrated the offence.

SEC. 12. A person that becomes lunatic or insane after the commission of a crime or misdemeanor, ought not to be tried for the offence during the continuance of the lunacy or insanity. If, after verdict of guilty, and before judgment pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue. And if after judgment, and before execution of the sentence, such person become lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of said person from the insanity or lunacy. In all of these cases, it shall be the duty of the court to empanel a jury to try the question, whether the accused be, at the time of empanneling, insane or lunatic.

DIVISION II. ACCESSORIES TO CRIMES.

SECTION

13. Accessories to crimes; when punished as principals.

SECTION

14. Accessory after the fact; how punished.

SECTION 13. An accessory is he or she, who stands by and aids, abets or assists; or who not being present aiding, abetting or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets or assists, advises or encourages, shall be deemed and considered as principal, and punished accordingly.

SEC. 14. An accessory after the fact, is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. Any person being found guilty of being an accessory after the fact, shall be imprisoned for any term not exceeding two years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case, and the enormity of the crime.

DIVISION III. WHO MAY BE WITNESSES IN CRIMINAL CASES.

SECTION

15. Party injured may be witness, unless incompetent by reason of infamy, &c., jury to determine credibility.

16. Black or mulatto person or Indian not evidence

SECTION

against white person; who deemed mulatto or Indian.

17. Approvers not to give testimony.

18. Affirmation deemed sufficient, and false affirmation deemed perjury.

SECTION 15. The party or parties injured shall, in all cases be competent witnesses, unless he, she or they shall be rendered incompetent by reason of his, her

or their infamy or other legal incompetency other than that of interest; the credibility of all such witnesses shall be left to the jury as in other cases.

SEC. 16. No black or mulatto person or Indian shall be permitted to give evidence in favor or against any white person whatsoever. Every person who shall have one-fourth part or more of negro blood shall be deemed a mulatto; and every person who shall have one-half Indian blood shall be deemed an Indian.

SEC. 17. Approvers shall not be allowed to give testimony.

SEC. 18. The solemn affirmation of witnesses shall be deemed sufficient. A false and corrupt affirmation shall subject the witness to all the penalties and punishment provided for those who commit wilful and corrupt perjury.

DIVISION IV. CRIMES AGAINST THE GOVERNMENT AND PEOPLE.

SECTION

19. Crimes against government, &c., what shall constitute, and who may commit.

20. Treason, what shall constitute, and penalty therefor; persons guilty of overt act out of

SECTION

this State, may be arrested in this State, and tried where arrested.

21. Misprision, what shall constitute, and penalty therefor.

SECTION 19. Crimes against the government and people shall consist in treason and misprision of treason, and can only be committed by persons owing allegiance to the State.

SEC. 20. Treason shall consist in levying war against the government and people of this State, in the same, or being adherent to the enemies of this State, giving them aid, advice and comfort in this State or elsewhere. Any person being thereof duly convicted of open deed by two or more witnesses or voluntary confession in open court, shall suffer the pains and penalty of death; and when the overt act of treason shall be committed without the limits of this State, the person charged therewith may be arrested, tried and punished in any county in this State, within the limits of which he may be found; and the offence may be charged to have been committed in the county where he may be arrested.

SEC. 21. Misprisions of treason shall consist in the knowledge and concealment of treason, without otherwise assenting to or participating in the crime. Any person found guilty thereof shall be punished by confinement in the penitentiary for any term not exceeding two years.

DIVISION V. OFFENCES AGAINST THE PERSONS OF INDIVIDUALS.

SECTION

22. Murder, what shall constitute, and how may be committed.

23. Express malice, what deemed.

SECTION

24. Implied malice, what deemed; penalty for murder.

25. Manslaughter, what constitutes, and how may be committed.

SECTION

26. Voluntary manslaughter, what shall be deemed provocation therefor.
27. The killing must be the result of violent passion, and if reasonable interval occur between provocation and act, to be considered deliberate revenge, and punished as murder.
28. Involuntary manslaughter, what deemed: *Pro-riso*, that when in the commission of an unlawful act or of felonious intent, the offence to be deemed murder.
29. Punishment.
30. The killing, what shall make it murder or manslaughter.
31. Accused to be tried in county where the cause of death was administered; and if party killed and party killing be in different counties when cause of death administered, accused may be tried in either county.
32. Justifiable homicide, what shall be deemed.
33. Bare fear of offence not considered justification for homicide.
34. Self-defence, what deemed.
35. Officer assaulted while serving process, when justified in killing.
36. Justifiable homicide, further defined.
37. Excusable homicide, what deemed; but if bounds of moderation be exceeded, and death ensue, shall be considered manslaughter or murder.
38. Other instances, when justifiable or excusable.
39. Homicide, when justifiable, person indicted shall be acquitted.

SECTION

40. Mitigation, burden of proof in, to devolve on accused.
41. When mother shall conceal death of illegitimate issue, if born alive, whether it may have been murdered or not, being convicted thereof, may be imprisoned; *Provided*, mother may be indicted for murder.
42. Distinction between petit treason and murder abolished.
43. Duelling, how punished.
44. Challenging or accepting challenge, penalty therefor.
45. Persons conveying challenge, how punished; indictment, allegation thereof.
46. Poisoning, punishment for.
47. Mayhem, what deemed, and punishment therefor.
48. Rape, what constitutes, who deemed guilty, and punishment therefor.
49. Emission not necessary to constitute rape.
50. Crime against nature, what deemed, and punishment therefor.
51. Assault, what constitutes.
52. Assault, with intent to commit murder &c., how punished; with intent to inflict bodily injury, how punished.
53. Assault and battery defined.
54. False imprisonment, what deemed, and how punished.
55. Kidnapping defined.
56. Kidnapping, who may be guilty thereof, and punishment therefor.
57. Kidnapping further defined, and punishment therefor.

SECTION 22. Murder is the unlawful killing of a human being, in the peace of the people, with malice aforethought, either express or implied. The unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting, or by any other of the various forms or means by which human nature may be overcome and death thereby occasioned.

SEC. 23. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

SEC. 24. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. The punishment of any person or persons convicted of the crime of murder shall be death.

SEC. 25. Manslaughter is the unlawful killing of a human being without malice express or implied and without any mixture of deliberation whatever. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible or involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection.

SEC. 26. In cases of voluntary manslaughter there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

SEC. 27. The killing must be the result of that sudden violent impulse of passion, supposed to be irresistible; for if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as murder.

SEC. 28. Involuntary manslaughter shall consist in the killing of a human being without any intent so to do, in the commission of an unlawful act, or a lawful act

which probably might produce such a consequence, in an unlawful manner: *Provided, always*, That where such involuntary killing shall happen in the commission of an unlawful act, which in its consequences naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offence shall be deemed and adjudged to be murder.

SEC. 29. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the penitentiary for a term not exceeding eight years.

SEC. 30. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered; in the computation of which, the whole of the day on which the hurt was done shall be reckoned the first.

SEC. 31. If the injury be inflicted in one county and the party die within another county or without the State, the accused shall be tried in the county where the cause of death was administered. And if the party killing shall be in one county and the party killed be in another county, at the time the cause of death shall be administered, the accused may be tried in either county.

SEC. 32. Justifiable homicide is the killing of a human being in necessary self defence or in the defence of habitation, property or person, against one who manifestly intends or endeavors by violence or surprise to commit a known felony, such as murder, rape, robbery, burglary and the like, upon either person or property, or against any person or persons who manifestly intend and endeavor, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

SEC. 33. A bare fear of any of these offences, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears and not in a spirit of revenge.

SEC. 34. If a person kill another in self defence, it must appear that the danger was so urgent and pressing, that in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear also, that the person killed was the assailant, or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given.

SEC. 35. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with treason, murder, rape, burglary, robbery, arson, perjury, forgery, counterfeiting or other crime, denominated felony by the common law, and he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused by reason of such resistance, he or she be killed, the officer or private person so killing shall be justified: *Provided*, That such officer or private person, previous to such killing, shall have used all reasonable efforts to take the accused without success, and that from all probability, there was no prospect of being able to prevent injury from such resistance and the consequent escape of such accused person.

SEC. 36. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer, who in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must,

however, in the performance of his duty, proceed according to the sentence and the law of the land.

SEC. 37. Excusable homicide, by misadventure, is when a person in doing a lawful act, without any intention of killing, yet unfortunately kills another; as where a man is at work with an axe and the head flies off and kills a bystander; or where a parent is moderately correcting his child, or master his servant or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correction was lawful; but if a parent or master exceed the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument or quantity of punishment, and death ensue, it will be manslaughter or murder, according to the circumstances of the case.

SEC. 38. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

SEC. 39. The homicide appearing to be justifiable or excusable, the person indicted shall upon his trial be fully acquitted and discharged.

SEC. 40. The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

SEC. 41. If any woman shall endeavor, privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which if born alive would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother being convicted thereof shall suffer imprisonment in the county jail for a term not exceeding one year: *Provided, however,* That nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

SEC. 42. The distinction between petit treason and murder is hereby abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and if convicted, be punished accordingly.

SEC. 43. If any person hereafter shall wilfully and maliciously, or by agreement, fight a duel or single combat, with any engine, instrument or weapon, the probable consequence of which might be the death of either party, and in so doing, shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party injured shall die thereof within one year thereafter, every such offender, his second, as well as the second of the person killed, and all aiders, abettors and counsellors, being thereof duly convicted, shall be considered to have committed a high misdemeanor, and shall be punished by confinement to labor in the penitentiary for any term not exceeding five years, nor less than one year.

SEC. 44. If any person shall hereafter challenge another to fight a duel with any deadly weapon, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon conviction thereof, be rendered incapable of holding or being elected to any office of profit, trust or emolument, either civil or military, under the government of this State, and be fined in a sum not exceeding one hundred dollars.

SEC. 45. If any person shall, willingly or knowingly, carry or deliver any written challenge, or verbally deliver any message intended as or purporting to be a

challenge, or shall be present at the fighting of any duel as aforesaid, as second or aid, or give countenance thereto, such person being thereof duly convicted shall be subject to the same fines and disabilities as are provided in the case of sending a challenge as aforesaid. It shall not be necessary in an indictment against any person or persons for fighting a duel, or against their seconds, aiders, abettors or counsellors, or against any person for sending or accepting a challenge, or for carrying any challenge, or delivering any message intended as or purporting to be a challenge, or for being present at the fighting of any duel as a second, or for aiding or giving countenance to any duel, or the sending or accepting any challenge, to specify the nature or kind of the engine, instrument or weapon with which the duel shall be fought or intended to be fought, so that it be alleged in the indictment, that the engine, weapon or instrument was deadly, the probable consequence of fighting with which, might be the death of either of the parties.

SEC. 46. Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary, for a term not less than one year, and not more than seven years. And every person who shall administer, or cause to be administered or taken, any such poison, substance or liquid, with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years in the penitentiary, and fined in a sum not exceeding one thousand dollars.

SEC. 47. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, ear or lip, or disable any limb or member of another, or shall voluntarily and of purpose, put out an eye or eyes, every such person shall be guilty of mayhem, and on conviction, shall be punished by confinement in the penitentiary, for a term not less than one year nor more than three years: *Provided*, That no person shall be found guilty of mayhem, where the fact occurred during a fight had by consent, nor unless it appear that the person accused shall have been the assailant, or that the party maimed had, in good faith, endeavored to decline further combat. But in all other cases where the fact shall happen in actual fight, the party accused, being thereof duly convicted, shall be adjudged guilty of a high misdemeanor, and punished by imprisonment in the penitentiary not exceeding one year, and be fined not exceeding one thousand dollars.

SEC. 48. Rape is the carnal knowledge of a female, forcibly and against her will. Every male person of the age of fourteen years and upwards, who shall have carnal knowledge of any female child under the age of ten years, either with or without her consent, shall be adjudged to be guilty of the crime of rape. Every person convicted of the crime of rape, shall be punished by confinement in the penitentiary for a term not less than one year, and may extend to life.

SEC. 49. It shall not be necessary to prove emission to convict any person of the crime of rape, or the crime against nature.

SEC. 50. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and may extend to life.

SEC. 51. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

SEC. 52. An assault, with an intent to commit murder, rape, mayhem, robbery or larceny, shall subject the offender to confinement in the penitentiary for a term not less than one year, nor more than fourteen years. An assault with a deadly weapon, instrument or other thing, with an intent to inflict upon the person of another, a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall be adjudged to be a high misdemeanor, and any person thereof duly convicted, shall be fined in a sum not exceeding one thousand dollars, and imprisoned not exceeding one year in the county jail.

SEC. 53. Assault and battery is the unlawful beating of another.

SEC. 54. False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall be fined in any sum not exceeding five hundred dollars, or imprisoned not exceeding one year in the county jail.

SEC. 55. Kidnapping is the forcible abduction or stealing away of a man, woman, or child, from his or her own country and sending or taking him or her into another.

SEC. 56. Every person who shall forcibly steal, take or arrest any man, woman, or child, whether white, black or colored, in this State, and carry him or her into another country, State or territory, or who shall forcibly take or arrest any person or persons whatsoever, with a design to take him or her out of this State, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnapping. Every person found guilty of kidnapping, shall be confined in the penitentiary for a term not less than one year, and not more than seven years, for each person kidnapped or attempted to be kidnapped.

SEC. 57. Every person who shall hire, persuade, entice, decoy or seduce, by false promises, misrepresentations and the like, any negro, mulatto or colored person, not being a slave, to go out of this State, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulatto or colored person into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto or colored person, any person so offending, shall be deemed to have committed the crime of kidnapping, and upon conviction thereof, shall be punished as in the preceding section.

DIVISION VI. CRIMES AND OFFENCES AGAINST HABITATIONS AND OTHER BUILDINGS.

SECTION

58. Arson, what deemed, and punishment therefor.
59. Arson, further defined, and punishment therefor.

SECTION

60. Burglary, what deemed, and punishment therefor.

SECTION 58. Every person who shall wilfully and maliciously burn, or cause to be burned, any dwelling house, kitchen, office, shop, barn, stable, store house, ware-

house, malt house, stilling house, factory, mill, pottery or other building, the property of any other person, or any church, meeting house, school house, state house, court house, work house, jail or other public building, or any boat or other water craft, or any bridge of the value of fifty dollars, erected across any of the waters of this State, such person, so offending, shall be deemed guilty of arson, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than one year nor more than ten years; and should the life or lives of any person or persons be lost in consequence of any such burning as aforesaid, such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly.

SEC. 59. Every person who shall wilfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with intent to burn or destroy the same, shall be deemed guilty of a high misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary for a term not exceeding two years, and be fined in a sum not exceeding five hundred dollars.

SEC. 60. Every person who shall, in the night time, wilfully and maliciously and forcibly break and enter, or wilfully and maliciously without force, (the doors or windows being open,) enter into any dwelling house, kitchen, office, shop, store house, warehouse, malt house, stilling house, mill, pottery, factory, water craft, church or meeting house, with intent to commit murder, robbery, rape, mayhem, larceny or other felony, shall be deemed guilty of burglary, and upon conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than ten years.

DIVISION VII. CRIMES AND OFFENCES RELATIVE TO PROPERTY.

SECTION

61. Robbery, its definition, and punishment therefor.
62. Larceny, its definition, and punishment therefor.
63. Stolen goods, buying or receiving, and punishment therefor.
64. Right of owner to stolen property.
65. Altering brands, marks, &c., with felonious intent, how punished.
66. Embezzlement, how punished.
67. Defalcations of persons intrusted by law, to collect, disburse, receive or safely keep any moneys for public purposes, how punished.

SECTION

68. Destroying any deed, lease or bond, how punished.
69. Landmarks, punishment for altering or removing.
70. Embezzlement by clerk, apprentice or servant, deemed larceny, and punished accordingly.
71. Bailee, converting money, &c., to his own use, deemed guilty of larceny, and punished accordingly.
72. Lodger embezzling property which he or she is to use, deemed guilty of larceny, and punished accordingly.

SECTION 61. Robbery is the felonious and violent taking of money, goods or other valuable thing, from the person of another, by force or intimidation. Every person guilty of robbery shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

SEC. 62. Larceny is the felonious stealing, taking and carrying, leading, riding or driving away the personal goods of another. Larceny shall embrace every theft which deprives another of his money or other personal property, or those means, or muniments by which the right and title to property, real or personal, may be ascertained. Private stealing from the person of another, and from a house

in the day time, shall be deemed larceny: Larceny may be also committed by feloniously taking and carrying away any bond, bill, note, receipt, or any instrument of writing of value to the owner. Every person convicted of larceny, shall be punished by confinement in the penitentiary, for a term not less than one year, and not more than ten years.

SEC. 63. Every person who for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or any thing, the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall, upon conviction, be punished by confinement in the penitentiary, for any term not less than one year, nor more than ten years, and every such person may be tried, convicted and punished, as well before as after the trial of the principal. No person convicted of larceny, or of buying or receiving goods or other things obtained by larceny, burglary or robbery, shall be condemned to the penitentiary, unless the money or the value of the thing stolen, bought or received, shall amount to five dollars.

SEC. 64. All property obtained by larceny, robbery or burglary, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. Such owner may maintain his action, not only against the felon, but against any person in whose possession he may find the same.

SEC. 65. Every person who shall mark or brand, alter or deface the mark or brand of any horse, mare, colt, jack, jennett, mule or any one or more head of neat cattle or sheep, goat, hog, shoat or pig, not his or her own property, but belonging to some other person, with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by confinement in the penitentiary, for a term not less than one year, nor more than three years: *Provided*, That no person shall be condemned to the penitentiary under this section, unless the value of the property affected shall amount to five dollars. And in case the value of the property affected by the offences herein described, or by larceny, or by buying or receiving goods or other property obtained by larceny, robbery or burglary shall not amount to five dollars, then the offender shall be punished by imprisonment in the county jail, for a term not exceeding three months, and fined not exceeding fifty dollars.

SEC. 66. Every servant, officer or person employed in any public department, station or office of the government of this State, or any county of this State, or in any office of a corporate body, who shall embezzle, steal, secrete or fraudulently take and carry away any money, goods, chattels, effects, book or books of record or of account, bond or bonds, promissory note or notes, bank bills or notes, or any other writing or security for the payment of money or property, of whatever description it may be, being the property of said State, county or corporate body, shall, on conviction, be punished by confinement in the penitentiary, for a term not less than one year nor more than ten years.

SEC. 67. If any officer or person who now is, or hereafter may be entrusted by law to collect, disburse, receive or safely keep, any money or moneys, revenue or revenues belonging to this State, to the school fund of this State, to the school fund of any county or township, to any county in this State, to any canal, turnpike or railroad fund of this State, or any county thereof, or to any fund for the improvement of any public road, river, creek or other water course, bordering on or within this State, or to any other fund, now in being, or hereafter to be established by law

for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes and orders which any such officer or person shall receive for disbursement, and has not disbursed, or shall collect, or shall receive, or shall receive for safe keeping, belonging to this State, to any county of this State, or to any such fund as aforesaid, when such officer or person shall be thereto required by law, and demand duly made by the successor or successors of such officer or person in office, or by the officer or person to whom such moneys, warrants, bills, notes or orders, ought by law to be paid over, or his or their attorney or agent duly authorized, in writing, signed and acknowledged, if such demand be practicable; every such officer or person shall, on conviction thereof, be punished by confinement in the penitentiary, for any term not less than one year, nor more than ten years: *Provided*, That no person shall be committed to the penitentiary under this section, unless the money not paid over shall amount to one hundred dollars, if it appear that such failure or refusal shall be occasioned by unavoidable loss or accident. Every person convicted under the provisions of this section, shall forever thereafter be ineligible and disqualified from holding any office of honor or profit in this State.

SEC. 68. Every person who shall fraudulently or maliciously tear, burn, efface, cut or in any other way destroy any deed, lease, bond, will or any other writing sealed, or any bank bill or note, check, warrant for the payment of money or other thing, or other security for the payment of money or the delivery of goods, or any certificate or other public security of this State or of the United States, or any of them for the payment of money, or any receipt, acquittance, release, defeasance, discharge of any debt, suit or other demand or any transfer or assurance of money, stock, goods, chattels or other property, or any letter of attorney or other power, or any day-book or other book of account, or any agreement or contract whatsoever, with intent to defraud, prejudice or injure any person or body corporate, shall, upon conviction thereof, be punished by confinement in the penitentiary, for a term not less than one year, nor more than five years.

SEC. 69. Every person who shall, knowingly, maliciously and fraudulently, cut, fell, alter or remove any certain boundary tree or other allowed land mark, to the wrong of his neighbor or any other person, shall, on conviction thereof, pay a fine not exceeding one hundred dollars, or be imprisoned in the county jail, for a term not exceeding three months.

SEC. 70. If any clerk, apprentice or servant, whether bound or hired, to whom any money, bank bill or note, or goods or chattels shall be entrusted or delivered by his or her master or mistress, shall withdraw himself or herself from his or her master or mistress, and go away with the said money, bank bill, or note or goods or chattels, or any part thereof, with intent to steal the same, and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her reposed by his or her said master or mistress, or being in the service of his or her said master or mistress, shall embezzle the said money, bank bill or note, goods or chattels, or any part thereof, or otherwise shall convert the same to his or her own use, with like purpose to steal the same, every such person so offending shall be deemed guilty of larceny, and be punished accordingly.

SEC. 71. If any bailee of any money, bank bill or note, or goods or chattels, shall convert the same to his or her own use, with an intent to steal the same, he shall be deemed guilty of larceny in the same manner as if the original taking had been felonious, and on conviction thereof, shall be punished accordingly.

SEC. 72. If any lodger shall take away, with intent to steal, embezzle or purloin, any bedding, furniture, goods or chattels, which he or she is to use, in or with his or her lodging, he or she shall be deemed guilty of larceny, and on conviction shall be punished accordingly.

DIVISION VIII. FORGERY AND COUNTERFEITING.

SECTION

- 73. Counterfeiting and forgery, how punished.
- 74. Gold or silver coin, counterfeiting or passing with intent to defraud, how punished.
- 75. Keeping in possession any counterfeit gold or silver coin, with intent to defraud, how punished.
- 76. Passing or receiving from any other person, any forged note, bill, &c., with intent to pass, how punished.
- 77. Passing or uttering, or having in possession,

SECTION

- with intent to pass, &c., any fictitious bill, &c., forgery, and punished accordingly.
- 78. Making or having in possession any die, plate or other apparatus for counterfeiting coin or bank notes, how punished.
- 79. On trial of person for forging bill or note of incorporated company, act of incorporation may be proved by general reputation.
- 80. Who may be witnesses.
- 81. Seal of State, or of any court, &c., when forged or counterfeited, how offender punished.

SECTION. 73. Every person who shall falsely make, alter, forge or counterfeit any record, or other authentic matter of a public nature, or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order, or any accountable receipt, or any order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or acquittance, release or receipt for money or goods, or any acquittance, release or discharge for any debt, account, action, suit, demand or other thing real or personal, or any transfer or assurance of money, stock, goods, chattels or other property whatever, or any letter of attorney or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory or promissory note, for money or other property; or shall counterfeit or forge the seal or hand writing of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate reside in, or belong to this State or not; or shall utter, publish, pass or attempt to pass as true and genuine, or cause to be uttered, published, passed or attempted to be passed as true and genuine, any of the above named false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body corporate and politic reside in this State or not; every person so offending, shall be deemed guilty of forgery, and upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years.

SEC. 74. Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this State, or shall pass or give in payment, or offer to pass or give in payment such counterfeited coin, or permit, cause or procure the same to be altered or passed, with intention to defraud any person, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and being thereof duly convicted, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years.

SEC. 75. Every person who shall have in his or her possession, or receive for any other person, any counterfeit gold or silver coin or coins, of the species now current or hereafter to be current in this State, with intention to utter or pass the same, or to permit, cause or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by confinement in the penitentiary, not less than one, nor more than fourteen years.

SEC. 76. Every person who shall have in his or her possession, or shall receive from any other person, any forged promissory note or notes, or bank bill or bills for the payment of money, with intention to utter or pass the same, or to permit, cause or procure the same to be uttered or passed, with intention to defraud any person or persons, body corporate or politic, whether such person or persons, body corporate or politic, reside in or belong to this State or not, knowing the same to be forged or counterfeited, or shall have or keep in his possession any blank or unfinished note or bank bill, made in the form or similitude of any promissory note or bill for payment of money, made to be issued by any incorporated bank or banking company in this State or elsewhere, with intention to fill up and complete such blank and unfinished note or bill, or to permit or cause or procure the same to be filled up and completed, in order to utter or pass the same, or to permit or cause or procure the same to be uttered or passed, to defraud any person or persons, body politic or corporate, whether in this State or elsewhere, shall, upon conviction thereof, be punished by confinement in the penitentiary, for a term not less than one year nor more than fourteen years.

SEC. 77. Every person who shall make, pass, utter or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this State or elsewhere, or with like intention shall attempt to pass, utter or publish, or shall have in his or her possession, with like intent to pass, utter or publish, any fictitious bill, note or check purporting to be the bill, note or check or other instrument of writing for the payment of money or property of some bank, corporation, co-partnership or individual, when in fact there shall be no such bank, corporation, co-partnership or individual in existence, the said person knowing the said bill, note, check or instrument of writing for the payment of money or property to be fictitious, shall be deemed guilty of the crime of forgery, and on conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one nor more than fourteen years.

SEC. 78. Every person who shall make or knowingly have in his possession, any die or dies, plate or plates, or any apparatus, paper, metal, machine or other thing whatever, made use of in counterfeiting the coin now current or hereafter to be current in this State, or in counterfeiting bank notes or bills, whether such bank be situate in this State or not, upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year nor more than fourteen

years; and all such dies, plates, apparatus, paper, metal or machines, intended for the purposes aforesaid, shall be destroyed.

SEC. 79. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

SEC. 80. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

SEC. 81. Every person who shall fraudulently forge, deface, corrupt or counterfeit the seal of this State, or the seal of any court or public officer by law entitled to have and use a seal, and shall make use of the same, or shall forge or counterfeit the signature of any public officer, or shall unlawfully and corruptly, or with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate or other writing, or who shall have in his possession or custody any such counterfeited seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by confinement in the penitentiary, for a term not less than one nor more than fourteen years.

DIVISION IX. CRIMES AND OFFENCES AGAINST PUBLIC JUSTICE.

SECTION

82. Perjury defined, and how punished.
83. Procuring conviction and execution of innocent person by perjury or subornation of perjury, punishable with death.
84. In indictment for perjury, what may be set forth.
85. Bribery, how punished.
86. Bribery, further defined, and how punished.
87. Bribery, finable in certain cases.
88. Any judge, justice, &c., who shall steal, embezzle, &c., any record, process, &c., or shall knowingly take off any issue, forfeited recognizance, &c., or shall forge any document, how punished.
89. Jailer, inhumanity of, how punished.
90. Officer withholding the records, &c., appertaining to his office from successor, or mutilating or destroying same, how punished.
91. False personation, how punished.
92. Resisting or assaulting officer in service of process, how punished.
93. Penalty for rescuing in certain cases.
94. Further penalty for setting criminal at liberty in certain cases.
95. When warden of penitentiary, &c., shall fraudulently contrive, procure, or voluntarily suffer the escape of any convict, how punished.
96. When warden of penitentiary, &c., shall negligently suffer convict to be at large, shall be fined.
97. When any person shall convey to any convict any tool, &c., to assist his escape, how punished.

SECTION

98. Rescuing person in legal custody on civil process, how punished.
99. Assisting prisoner to escape from jail, how punishable.
100. Assisting prisoner to escape, or rescuing prisoner from custody, how punished.
101. If any sheriff, coroner, &c., having prisoner in legal custody, shall voluntarily suffer him to escape, how punished.
102. When sheriff, &c., shall wilfully refuse to receive or arrest any person charged with crime, how punished.
103. Compounding criminal offence, finable.
104. Conspiracy to charge with criminal offence, how punished.
105. Penalty for assuming right to exercise office.
106. Embracery, what constitutes, and how punished.
107. Barratry, what deemed, and penalty therefor.
108. Maintenance, what deemed, and penalty therefor.
109. If any judge, justice of the peace, &c., shall receive fee except as allowed by law, he shall be deemed guilty of extortion, and fined.
110. Omission of duty, malfeasance, &c., or other misconduct, by clerk, sheriff or other public officer, punishable by fine and removed from office; vacancy, how filled.
111. Threatening to accuse of crime, or to injure person or property, how punished.

SECTION 82. Every person having taken a lawful oath, or made affirmation in any judicial proceeding, or in any other matter where by law, an oath or affirma-

tion is required, who shall swear or affirm, wilfully, corruptly and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury, (as the case may be,) and upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years.

SEC. 83. Every person who by wilful and corrupt perjury or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed and adjudged guilty of murder, and upon conviction thereof, shall suffer the punishment of death.

SEC. 84. In every indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and before what court or authority the oath or affirmation was taken, averring such court or authority to have had full power to administer the same, together with the proper averment or averments to falsify the matter or matters wherein the perjury is assigned, without setting forth any part of the record or proceedings, either in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court or other authority before whom the perjury was committed, or the form of the oath or affirmation, or the manner of administering the same.

SEC. 85. If any person or persons shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security, for the payment or delivery of any money, present, reward or any other thing, to obtain or procure the opinion, judgment or decree of any judge or justice of the peace, acting within this State, or to corrupt, induce or influence such judge or justice of the peace to be more favorable to one side than to the other, in any suit, matter or cause depending or to be brought before him or them, or shall, directly or indirectly, give any sum or sums of money, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present or reward, or other thing, to obtain, procure or influence the vote of any member of the General Assembly, or to incline, induce or influence any such member of the General Assembly to be more favorable to one side than the other, on any question, election, matter or thing pending, or to be brought before the General Assembly, or either house thereof, the person so giving any money, bribe, present or reward, promise, contract, obligation or security, with intent and for the purpose aforesaid, and the judge, justice of the peace, or member of the General Assembly, who shall in anywise accept or receive the same, shall be deemed guilty of bribery, and on conviction, shall be punished by confinement in the penitentiary, not less than one year nor more than five years.

SEC. 86. If any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security for the payment of any money, present or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general or State's attorney, member of the General Assembly or other officer, ministerial or judicial, (but such fees as are allowed by law,) with intent to induce or influence such officer to appoint any person to office, or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or exercised any power in him vested, or performed any duty of him required, with partiality or favor, or otherwise contrary

to law, the person so giving, and the officer so receiving any money, bribe, present, reward, promise, contract, obligation or security, with intent, or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and on conviction, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than five years.

SEC. 87. Every person who shall offer, or attempt to bribe any member of the General Assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, State's attorney or other ministerial or judicial officer, in any of the cases mentioned in either of the two preceding sections; and every member of the General Assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, State's attorney or other ministerial or judicial officer, who shall propose or agree to receive a bribe in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be fined in a sum not exceeding five hundred dollars.

SEC. 88. If any judge, justice of the peace, sheriff, coroner, clerk, recorder or other public officer, or any person whatsoever, shall steal, embezzle, alter, corrupt, withdraw, falsify or avoid any record, process, charter, gift, grant, conveyance, bond or contract, or shall knowingly and wilfully take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture, or shall forge, deface or falsify any document or instrument recorded, or any registry, acknowledgment or certificate, or shall alter, deface or falsify any minute, document, book or any proceeding whatever, of, or belonging to any public office within this State, the person so offending and being thereof duly convicted, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than seven years.

SEC. 89. Every jailer who shall be guilty of wilful inhumanity or oppression, to any prisoner under his care or custody, shall be fined in any sum not exceeding five hundred dollars, and be removed from office.

SEC. 90. If any officer, whose office shall be abolished by law, or who after the expiration of the time for which he may be appointed or elected, or after he shall have resigned or been legally removed from his office, shall wilfully and unlawfully withhold or detain from his successor or other person entitled thereto by law, the records, papers, documents or other writing appertaining or belonging to his office, or mutilate, destroy or take away the same, the person so offending shall, on conviction, be punished by confinement in the penitentiary, for a term not less than one year, nor more than five years. The provisions of this section shall apply to any person or persons who shall have such records, documents, papers or other writings, in his, her or their possession, and who shall wilfully mutilate, destroy, withhold or detain the same as aforesaid.

SEC. 91. If any person shall, without due authority so to do, acknowledge or confess, or procure to be acknowledged or confessed, any fine, common recovery, deed, bond, power of attorney, mortgage, recognizance, bail or judgment, in the name of any other person, by personating any such other person, the person so offending, on conviction thereof, shall be punished by confinement in the penitentiary, for any term not less than one year, nor more than ten years.

SEC. 92. If any person shall, knowingly and wilfully, obstruct, resist or oppose any sheriff, deputy sheriff, coroner, constable or other officer of this State, or other person duly authorized, in serving or attempting to serve any lawful process or order of any court, judge or justice of the peace, or any other legal process whatsoever, or shall assault or beat any sheriff, deputy sheriff, coroner, constable or

other officer, or person duly authorized in serving or executing, or attempting to serve or execute any process or order aforesaid, or for having served or executed, or attempted to serve or execute the same, every person so offending shall be fined in any sum not exceeding five hundred dollars, and imprisoned, for a term not exceeding one year: *Provided*, Any officer or person whatever that may or shall assault or beat any individual under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

SEC. 93. If any person or persons shall set at liberty, or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years; and if any person or persons shall set at liberty, or rescue any person who shall have been found guilty, or convicted of a crime, the punishment of which is confinement in the penitentiary, whether such person be in custody of an officer, or in the penitentiary, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

SEC. 94. If any person shall set at liberty, or rescue any person who before conviction stands charged or committed for any capital offence, or any crime punishable by confinement in the penitentiary, such person so offending, shall be, on conviction, fined in a sum not exceeding one thousand dollars, and imprisoned in the penitentiary, for a term not exceeding three years; and if the person rescued or set at liberty stands charged, committed or convicted of any misdemeanor, or other offence punishable by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty, if he or she had been found guilty.

SEC. 95. If the warden of the penitentiary, or any servant, officer or agent, belonging to, or in employment at the same, or any sheriff, deputy sheriff or jailer, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at or otherwise voluntarily suffer the escape of any convict in custody, or in said penitentiary committed, every such person, on conviction, shall be punished by confinement in said penitentiary—to solitary confinement for a term not exceeding three months, and by confinement to hard labor for a term not exceeding ten years.

SEC. 96. If the warden of the penitentiary, or other person as aforesaid, shall negligently suffer any convict committed, or in custody as aforesaid, under sentence of solitary imprisonment, to be at large without the cell or apartment assigned to such convict, or to be there visited, conversed with, comforted or relieved, contrary to the rules and regulations of the penitentiary, or shall negligently suffer such convict, or any other convict committed to the penitentiary, under sentence of confinement to hard labor, to be at large without the precincts of the penitentiary, or contrary to the rules and regulations thereof, to be out of close confinement, the warden or other person neglecting his duty in the premises, being thereof duly convicted, shall be punished by fine, not exceeding two hundred dollars.

SEC. 97. If any person shall convey to any convict in custody, or committed to the penitentiary, into the penitentiary, or other place where such convict may be confined, any tool, weapon or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, every person so offending, on conviction thereof, shall be punished by fine, not exceeding five hundred dollars, and imprisonment in the penitentiary, not exceeding six months.

SEC. 98. If any person or persons shall rescue another in legal custody, on civil process, such person or persons shall, on conviction, be fined in any sum not exceeding the sum for which said civil process issued.

SEC. 99. If any person shall aid or assist a prisoner lawfully committed or detained in any jail for any offence against this State, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from jail, though no escape be actually made, or if any person shall convey, or cause to be delivered to such prisoner, any disguise, instrument or arms, proper to facilitate the escape of such prisoner, any person so offending, (although no escape or attempt to escape be actually made,) shall, on conviction, be punished by fine, not exceeding five hundred dollars, and imprisonment in the county jail, for a term not exceeding one year.

SEC. 100. If any person shall aid or assist any prisoner to attempt to escape, or shall rescue or attempt to rescue any prisoner from the custody of any sheriff, deputy sheriff, coroner, constable, officer or other person, who shall have the lawful custody of such prisoner, every person so offending, shall, upon conviction thereof, be fined not exceeding one thousand dollars, and imprisoned in the county jail, not exceeding one year.

SEC. 101. If any sheriff, coroner, jailer, keeper of a prison, constable or other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending, shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the county jail, for any term not exceeding six months: *Provided*, That if such prisoner be in custody charged with murder or other capital offence, then such officer or person suffering or permitting such escape, shall be punished by confinement in the penitentiary, for any term not less than one year, nor more than ten years. A negligent escape of a person charged with a criminal offence, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and punished by fine, not exceeding five hundred dollars.

SEC. 102. If any sheriff, coroner, keeper of a jail, constable or other officer, shall wilfully refuse to receive or arrest any person charged with a criminal offence, then such sheriff, coroner, jailer, constable or other officer, shall, on conviction, be fined, not exceeding five hundred dollars, and imprisoned, not exceeding six months, in the common jail.

SEC. 103. If any person shall take money, goods, chattels, lands or other reward, or promise thereof, to compound any criminal offence, such person or persons shall be fined, in double the sum or value of the thing agreed for or taken, but no person shall be debarred from taking his goods or property from the thief or felon, or receiving compensation for the private injury occasioned by the commission of any such criminal offence.

SEC. 104. If any two or more persons shall conspire or agree, falsely and maliciously to charge or indict, or cause or procure to be charged or indicted, any person for any criminal offence, each of the persons so offending, shall, on conviction, be fined, in any sum not exceeding one thousand dollars, and imprisoned, not exceeding one year.

SEC. 105. If any person shall take upon himself to exercise or officiate in any office or place of authority in this State, without being lawfully authorized thereto, he shall, upon conviction, be fined in any sum not exceeding two hundred dollars.

SEC. 106. Embracery is an attempt to influence a juror or jurors corruptly to one side, by threats or menaces, or by promises, persuasions, entreaties, money, entertainments and the like. Every embracer who shall procure any juror to take money, gain or profit, or shall corruptly influence any juror by persuasions, promises, entreaties, or by any other improper means, or shall threaten or menace any juror, shall be fined, not exceeding five hundred dollars, and imprisoned in the penitentiary, not exceeding one year. And any juror convicted of taking money, gain or profit, or corruptly being influenced as aforesaid, shall suffer the like punishment, and be forever disqualified to act as a juror. This section shall apply as well to the grand as the petit jurors.

SEC. 107. If any person or persons shall wickedly and wilfully excite and stir up any suits or quarrels between the people of this State, either at law or otherwise, with a view to promote strife and contention, every such person so offending, shall be deemed to have committed the crime of *common barratry*, and upon conviction thereof shall be fined, in any sum not exceeding one hundred dollars; and if he be an attorney or counsellor at law, he shall be suspended from the practice, for any time not exceeding six months.

SEC. 108. If any person shall officiously intermeddle in any suit at common law or in chancery, that in nowise belongs to or concerns such person, by maintaining or assisting either party with money or otherwise, to prosecute or defend such suit, with a view to promote litigation, every such person, so offending, shall be deemed to have committed the crime of *maintenance*, and upon conviction thereof shall be fined and punished as in cases of *common barratry*: *Provided*, That it shall not be considered maintenance for a man to maintain the suit of his kinsman or servant or poor neighbor out of charity.

SEC. 109. If any judge, justice of the peace, sheriff, coroner, constable, clerk or other officer of this State, ministerial or judicial, shall wilfully or corruptly receive or take any fee or reward, to execute or do his duty as such officer, except such as is or shall be allowed by law, or if any such officer shall wilfully or corruptly ask or demand as a condition precedent to the performance of his duty as such officer, any fee or reward, except such as shall be allowed by law, every such officer so offending, shall be deemed guilty of extortion, and on conviction thereof, shall be fined, in any sum not exceeding two hundred dollars.

SEC. 110. Every clerk, sheriff, coroner, constable, county commissioner, justice of the peace, recorder, county surveyor, attorney general or State's attorney, who shall be guilty of any palpable omission of duty, or who shall wilfully and corruptly be guilty of oppression, malfeasance or partiality in the discharge of his official duties, shall, upon conviction thereof, be fined, in a sum not exceeding two hundred dollars, and the court shall have power, upon the recommendation of the jury, to add to the judgment of the court, that any officer so convicted, shall be removed from office. The court shall have power whenever any clerk of the circuit court, attorney general or State's attorney, shall be presented or indicted, to appoint for that occasion, a prosecuting attorney or clerk, as the case may require, who shall thereby be invested, in relation to such presentment or indictment, with all the powers of clerk or attorney general or State's attorney. It shall be the duty of the court, when the judgment shall extend to removal from office, to cause immediate notice of such removal to be given to the proper department, in order that the vacancy thus occasioned may be filled.

SEC. 111. If any person shall, knowingly send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor or to expose or publish

any of his infirmities or failings, with intent to extort money, goods, chattels or other valuable things, or threatening to maim, wound, kill or murder, or to burn or destroy his or her house or other property, or to accuse another of a crime or misdemeanor, or expose or publish any of his or her infirmities or failings, though no money, goods, chattels or valuable thing be demanded, such person so offending, shall, on conviction, be fined in a sum not exceeding five hundred dollars and imprisoned, not exceeding six months.

DIVISION X. OFFENCES AGAINST THE PUBLIC PEACE AND TRANQUILLITY.

SECTION

112. Disturbing the peace, how punished.
 113. Persons assembling to disturb the peace, refusing to disperse when required by judge, justice, or other public officer, liable to fine and imprisonment.
 114. Affray, what deemed.
 115. Unlawful assemblage defined, and punishment therefor.
 116. Rout defined, and punishment therefor.

SECTION

117. Riot, what constitutes, and penalty therefor.
 118. Failure of officer to preserve public peace upon knowledge of contemplated duel, such officer shall be fined.
 119. Publication of cowardice in refusing to accept a challenge to fight a duel, shall render writer or printer liable to fine and imprisonment.
 120. Libel, what constitutes, and liability therefor. Truth may be given in evidence.

SECTION 112. If any person, at late and unusual hours of the night time maliciously or wilfully disturb the peace or quiet of any neighborhood or family, by loud or unusual noises or by tumultuous and offensive carriage, threatening, traducing, quarreling, challenging to fight or fighting, every person convicted thereof, shall be fined in a sum not exceeding fifty dollars or imprisoned, not exceeding two months.

SEC. 113. If two or more persons assemble for the purpose of disturbing the public peace or committing any unlawful act, and do not disperse on being desired or commanded so to do, by a judge, justice of the peace, sheriff, coroner, constable or other public officer, persons so offending, shall, on conviction, be severally fined, in any sum not exceeding fifty dollars, and imprisoned, not exceeding one month.

SEC. 114. If two or more persons shall, by agreement, fight in a public place, to the terror of the citizens of this State, the persons so offending shall be deemed guilty of an affray.

SEC. 115. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing towards it, such persons shall be deemed guilty of an unlawful assemblage, and upon conviction thereof, be severally fined, in a sum, not exceeding fifty dollars, or imprisoned, not exceeding three months.

SEC. 116. If two or more persons shall meet to do an unlawful act, upon a common cause of quarrel, and make advances towards it, they shall be deemed guilty of a rout, and on conviction, shall be severally fined, in a sum not exceeding seventy dollars, or imprisoned, not exceeding four months.

SEC. 117. If two or more persons actually do an unlawful act with force or violence against the person or property of another, with or without a common cause of quarrel, or even do a lawful act in a violent and tumultuous manner, the persons so offending, shall be deemed guilty of a riot, and on conviction, shall severally be fined, not exceeding two hundred dollars, or imprisoned, not exceeding six months.

SEC. 118. If any judge, justice of the peace, sheriff or other officer bound to preserve the public peace, shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined, not exceeding one hundred dollars.

SEC. 119. If any person or persons shall, in any newspaper or handbill, written or printed, publish or proclaim any other person or persons as a coward or cowards, or use any other opprobrious or abusive language, for not accepting a challenge to fight a duel, or for not fighting a duel, such person or persons so offending, on conviction, shall be fined, in a sum not exceeding five hundred dollars, or imprisoned, for a term not exceeding three months. The publisher or printer of any such newspaper, handbill or other publication, may be summoned as a witness, and shall be required to testify against the writer or writers of such handbill or publication; and if any such printer or printers shall refuse to testify in relation to the premises, either before the grand or petit jury, he or they shall be deemed guilty of a flagrant contempt of the court, and may be punished by fine and imprisonment, or either: *Provided, however,* That the testimony given by any such witness shall, in no case, be used in any prosecution against such witness.

SEC. 120. A libel is a malicious defamation, expressed either by printing or by signs or pictures, or the like, tending to blacken the memory of one who is dead or to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby to expose him or her to public hatred, contempt or ridicule: Every person, whether writer or publisher, convicted of this offence, shall be fined, in a sum not exceeding five hundred dollars, or imprisoned, not exceeding one year. In all prosecutions for a libel, the truth thereof may be given in evidence in justification, except libels tending to blacken the memory of the dead, or expose the natural defects of the living.

DIVISION XI. OFFENCES AGAINST THE PUBLIC MORALITY, HEALTH AND POLICE.

SECTION

121. Bigamy, what constitutes, and punishment therefor.
122. Bigamy, further defined, and penalty.
123. Adultery and fornication, and punishment therefor.
124. What marriages declared incestuous.
125. Incestuous intercourse, and punishment therefor.
126. Cohabitation of father and daughter, how punished.
127. Open lewdness, indecency and debauchery, how punished.
128. Playing cards, dice, &c., importation or use of, how punished.
129. Gaming houses, keepers of, how punished.
130. Gaming, how punished.
131. Tavern keepers, penalty for permitting gaming in their houses; justices of the peace, their duty under this chapter, and penalty for omission thereof.

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132. Spirituous liquors, selling without license, how punished.
133. Colored servants, slaves or Indians, selling liquor to, how punished.
134. Public roads and highways, navigable and other streams, obstruction of, how punished.
135. Unwholesome food, penalty for selling.
136. Bills of credit, for issuing when not authorized, how punished.
137. Public notices, defacing, injuring or destroying, how punished.
138. Vagrants, how disposed of.
139. Suspicious persons, under certain circumstances, deemed vagrants, and how punished.
140. *Posse comitatus*, penalty for refusing to join.
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142. Voting fraudulently, how punished.
143. Bribery of electors, how punished.
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SECTION

145. Preceding section, how to be construed.
 146. Private family, disturbance of on Sabbath, penalty therefor.
 147. Public worship, disturbance of, how punished.

SECTION

148. Jurisdiction of justices of the peace, and officers above named.
 149. Offences specified in the preceding five sections, how tried, &c.
 150. Appeals.

SECTION 121. Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this State, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by a fine, not exceeding one thousand dollars, and imprisoned in the penitentiary, not exceeding two years. It shall not be necessary to prove either of the said marriages by the register or certificate thereof, or other record evidence; but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall have taken place without this State, cohabitation in this State, after such second marriage, shall be deemed the commission of the crime of bigamy, and the trial in such case may take place in the county where such cohabitation shall have occurred. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is or shall be at the time of such second marriage, divorced by lawful authority from the bands of such former marriage, or to any person where the former marriage hath been by lawful authority declared void.

SEC. 122. If any man or woman, being unmarried, shall knowingly marry the husband or wife of another, such man or woman shall, on conviction, be fined, not more than five hundred dollars, or imprisoned, not more than one year.

SEC. 123. Any man and woman who shall live together in an open state of adultery or fornication, or adultery and fornication, every such man and woman shall be indicted, and on conviction, shall be fined, in any sum not exceeding two hundred dollars each, or imprisoned, not exceeding six months. This offence shall be sufficiently proved by circumstances which raise the presumption of cohabitation and unlawful intimacy; and for a second offence, such man or woman shall be severally punished twice as much as the former punishment, and for the third offence, treble, and thus increasing the punishment for each succeeding offence: *Provided, however,* That it shall be in the power of the party or parties offending, to prevent or suspend the prosecution by their intermarriage, if such marriage can be legally solemnized, and upon the payment of the costs of such prosecution.

SEC. 124. Marriages between parents and children, including grand-parents and grand-children of every degree, between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, aunts and nephews, are declared to be incestuous and absolutely void. This section shall extend to illegitimate as well as legitimate children and relations.

SEC. 125. Persons within the degrees of consanguinity within which marriages are declared by the preceding section to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or who shall lewdly and lasciviously cohabit with each other, shall be liable to indictment, and upon conviction, be punished by imprisonment in the penitentiary, not exceeding ten years.

SEC. 126. If a father shall rudely and licentiously cohabit with his own daughter, the father shall, on conviction, be punished by confinement in the penitentiary, for a term not exceeding twenty years.

SEC. 127. If any person shall be guilty of open lewdness, or other notorious act of public indecency, tending to debauch the public morals, or shall keep open any tippling house on the Sabbath day or night, or shall maintain or keep a lewd house or place for the practice of fornication, or shall keep a common ill-governed and disorderly house, to the encouragement of idleness, gaming, drinking, fornication or other misbehavior, every such person shall, on conviction, be fined, not exceeding one hundred dollars, or imprisoned, not exceeding six months.

SEC. 128. If any person shall hereafter bring or cause to be brought or imported into this State for sale, or shall sell or offer to sell any pack or packs of playing cards, or any dice, billiard table, billiard balls, or any other device or thing invented or made for the purpose of being used at any game, or any obscene book, pamphlet or print, every such person shall, on conviction, be fined, in a sum not less than twenty-five dollars, nor more than fifty dollars.

SEC. 129. If any person shall, by himself, herself, servant or other agent, for his or her gain or profit, keep, have, exercise or maintain a common gaming house, table or room, or in any house or place occupied by him or her, procure or permit any persons to frequent or come together to play for money, or other valuable thing, at any game, every offender, on conviction, shall be fined, not exceeding one hundred dollars, or imprisoned, not exceeding six months.

SEC. 130. If any person or persons shall play for money or other valuable thing, at any game with cards, dice, checks or at billiards, or with any other article or instrument, thing or things whatsoever, which may be used for the purpose of playing or betting upon, or winning or losing money, or any other thing or things, article or articles of value, or shall bet on any game others may be playing, every person so offending shall be fined, not exceeding one hundred dollars, and not less than ten dollars.

SEC. 131. Every tavern keeper who shall suffer or permit any game or games, prohibited or intended to be prohibited by this chapter, to be played in his tavern, or in any out house appendant thereto, shall, on conviction, be fined, not exceeding one hundred dollars, and shall forfeit his license, and shall not be again licensed as a tavern keeper for one year from such conviction. It shall be the duty of all justices of the peace, sheriffs, coroners and grand jurors now in office, or hereafter to be appointed, to take notice and give information to the proper authorities, of all such offences as may be committed in their respective counties, contrary to the provisions of this chapter, whenever the same may in anywise come under their immediate observation. And if any officer, whose duty it is made to execute the provisions of this chapter, shall neglect to enforce its provisions upon view or complaint, such officer, upon conviction thereof, shall be fined in the sum of one hundred dollars, and shall moreover be suspended from office for one year.

SEC. 132. Every person who shall not have a legal license to keep a grocery, who shall barter, exchange or sell any wine, rum, brandy, gin, whiskey or other vinous, spirituous or mixed liquors, to any person or persons, by a less quantity than one quart, shall, on conviction, be fined for every offence ten dollars.

SEC. 133. Every tavern keeper or other retailer of spirituous liquors, who shall barter, sell or exchange any wine, rum, gin, brandy, whiskey or other spirituous liquors, to any black or mulatto servant or slave, without the consent of the master

or mistress of such servant or slave; and every person, whether tavern keeper or not, who shall sell, barter or exchange any wine, rum, gin, brandy, whiskey or other spirituous or mixed liquors, to any Indian or Indians in this State, shall, on conviction, be fined in the sum of ten dollars for each offence.

SEC. 134. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley, of any town or village, or any public bridge or causeway, or public river or stream declared navigable by law, or shall continue such obstruction, so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade or manufacture or business, or continue the same after it has been erected or established, or shall in anywise pollute or obstruct any water course, lake, pond, marsh or common sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, town, village or neighborhood thereabouts; every person so offending, shall, upon conviction thereof, be fined not exceeding one hundred dollars. And every such nuisance may, by order of the circuit court before whom the conviction may take place, be removed and abated by the sheriff of the proper county; and any inquest and judgment thereon, had under the provisions of any law authorizing a writ of *ad quod damnum*, shall be no bar to a prosecution under this chapter.

SEC. 135. If any person or persons shall, knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any pernicious or adulterated drink or liquors, every person so offending, shall be fined, not exceeding one hundred dollars, or imprisoned, not exceeding three months.

SEC. 136. If any person, number of persons or corporation, in this State, without special leave from the General Assembly, shall emit or utter any bill of credit, make, sign, draw or indorse any bond, promissory note or writing, bill of exchange or order, to be used as a general circulating medium, as, and in lieu of money or other currency, every such person or persons, or members of such corporation, assenting to such proceedings, being thereof duly convicted, shall pay a fine, not exceeding three hundred dollars, or be imprisoned, not exceeding one year.

SEC. 137. If any person shall intentionally deface, obliterate, tear down or destroy, in whole or in part, any copy or transcript, or extract from, or of any law of the United States or of this State, or any proclamation, advertisement or notification, set up at any place in this State by authority of any law of the United States or of this State, or by order of any court, such person, on conviction, shall be fined, in a sum not exceeding fifty dollars, nor less than five dollars, or imprisoned, for a term not exceeding one month: *Provided*, That this section shall not extend to defacing, tearing down, obliterating or destroying any law, proclamation, publication, advertisement or notification, after the time for which the same was by law to remain set up, shall have expired.

SEC. 138. Any person able to work and support himself in some honest and respectable calling, not having wherewithal to maintain himself, who shall be found loitering, strolling about, frequenting of public places where liquor is sold, begging or leading an idle, immoral or profligate course of life, shall be liable to be indicted or arrested on the complaint, under oath, of any resident citizen of the county, and carried before any two justices of the peace, who shall examine said accused person, and hear the testimony in relation thereto; and if they shall be satisfied that he is a vagrant, as above set forth, the fact having been established by a jury, which shall in all such cases be summoned and sworn to inquire the truth thereof,

whether the person be a vagrant or not, shall make out a warrant under their hands and seals, authorizing and requiring the officer having him in charge or custody, to hire out such vagrant, within twenty-four hours to the best bidder, by public outcry, or on a notice given, as they shall direct, for the highest price that can be had, for any term not exceeding four months: and such vagrant shall be subject to, and governed by, all the provisions of the act regulating apprentices, during the time for which he has been so hired. The money received for his hire shall, after deducting the costs, be, if he be without a family, paid into the county treasury; but if he have a family, the same shall be appropriated for their use and benefit: *Provided*, That any such vagrant, when arrested, and before judgment, may release himself by giving to said justices a bond, with good security, conditioned that he will for the next twelve months be of good behavior, and betake himself to some honest employment for support, and that he shall not, nor his family, become a county charge, through, or by reason of his idleness, immorality or profligacy.

SEC. 139. If any person shall be found, having upon him or her, any pick-lock, crow, key, bit or other instrument or tool, with intent feloniously to break and enter into any dwelling house, store, warehouse, shop or other building containing valuable property, or shall be found in any of the aforesaid buildings with intent to steal any goods and chattels, every such person so offending, shall, on conviction, be deemed a vagrant, and punished by confinement in the penitentiary, for any term not exceeding two years. And if any person shall have upon him any pistol, gun, knife, dirk, bludgeon or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined, in a sum not exceeding one hundred dollars, or imprisoned, not exceeding three months.

SEC. 140. Every male person above eighteen years of age, who shall neglect or refuse to join the *posse comitatus*, or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may have issued any civil or criminal process, or by neglecting or refusing to aid and assist in retaking any person or persons, who after having been arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offence, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge or justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined, in a sum not less than ten dollars, nor more than fifty dollars.

SEC. 141. If any person or persons shall open the grave or tomb where the body or bodies of any deceased person or persons shall have been deposited, and shall remove the body or bodies, or remains of any deceased person or persons from the grave or place of sepulture, for the purpose of dissection, or any surgical or anatomical experiment, or for any other purpose, without the knowledge and consent of the near relations of the deceased, or shall in any way aid, assist, counsel or procure the same to be done, every such person or persons so offending, shall, on conviction, be fined, not less than one hundred dollars nor more than five hundred dollars: *Provided*, That this section shall not extend to the dissection of any criminal where the same shall be directed to be delivered up for that purpose by competent authority: *And provided also*, That this section shall not be construed to prevent any person from removing the body or bodies of their deceased relations or intimate friends, to any other place of sepulture that he or she may think proper.

SEC. 142. If any person, being an elector, shall vote more than once at any election which may be held by virtue of any law of this State, he shall, on conviction thereof, be fined, in any sum not exceeding one hundred dollars.

SEC. 143. If any person shall, by bribery, menace, treating or other corrupt means or device whatsoever, either directly or indirectly, attempt to influence any elector of this State in giving his vote at any election, every person so offending, and being thereof convicted, shall be fined, not exceeding five hundred dollars, and shall thereafter be disqualified from voting at any election in this State for five years.

SEC. 144. Any person who shall hereafter knowingly disturb the peace and good order of society by labor or amusement on the first day of the week, commonly called Sunday, (works of necessity and charity excepted,) shall be fined, upon conviction thereof in any sum not exceeding five dollars.

SEC. 145. The preceding section shall not be construed to prevent watermen from landing their passengers, lading and unlading their cargoes, or ferrymen from carrying over the water, travelers or persons moving with their families, on the first day of the week; nor to prevent the due exercise of the rights of conscience by any person who may think proper to keep any other day as a Sabbath, than the first day of the week.

SEC. 146. Whoever shall be guilty of any noise, rout or amusement on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, such person, so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined, in any sum not exceeding twenty-five dollars.

SEC. 147. Any person who shall, by menace, profane swearing, vulgar language or any disorderly or immoral conduct, interrupt and disturb any congregation or collection of citizens assembled together for the purpose of worshipping Almighty God, or who shall sell or attempt to sell, or otherwise dispose of ardent spirits or liquors, or any articles, which will tend to disturb any worshipping congregation or collection of people, within one mile of such place, unless the person so selling or disposing of said spirituous liquors or articles, shall be regularly licensed to keep a tavern or grocery, and shall sell the same at his said tavern or grocery, any person so offending shall be deemed guilty of a high misdemeanor, and upon conviction, shall be fined, in any sum not exceeding fifty dollars: *Provided*, That this section shall not be so construed as to affect any person who may sell whiskey or any other ardent spirits at his own distillery, store or dwelling house.

SEC. 148. Justices of the peace, respectively, in their several counties, shall have jurisdiction of the aforesaid offences, and may, on view or upon information on oath, cause every such person, having offended as aforesaid, to be apprehended and brought before him to answer such charge.

SEC. 149. Any person who shall be accused of either of the offences specified in the five preceding sections, if he choose it, shall have the cause tried by a jury of six lawful jurors, and if he shall insist on a full jury, by twelve, who shall be summoned to try the cause; and if the jury shall find the accused guilty, they shall assess and state the amount of the fine, not more than in said sections specified; upon which the justice before whom the trial shall be had, or in case the person shall plead guilty, shall give judgment for fine and costs, and proceed to collect the same without delay; and when said fine shall be collected, the officer or person collecting the same shall be required to pay it over without delay to the treasurer of the proper county, taking his receipt therefor; and which receipt shall be filed with the

clerk of the county commissioners' court; after which the said fine or fines which may be thus deposited shall be subject to the control of said court, and appropriated to the education of any poor orphan child or children of the proper county.

SEC. 150. The judgments rendered under the six preceding sections shall be subject to appeals as in cases of assault and battery and affrays, and shall be collected in the same manner.

DIVISION XII. OFFENCES COMMITTED BY CHEATS, SWINDLERS AND OTHER FRAUDULENT PERSONS.

SECTION

151. Fraudulent conveyance, penalty for making, and for knowingly receiving benefit of.
152. False representations, &c., what constitutes, and how punished.

SECTION

153. False pretences, person guilty of, deemed a cheat, punishment therefor.
154. Fraudulent sale of lands or lots, how punished.
155. False weights, use of, how punished.

SECTION 151. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance had, made or contrived, with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts, damages or demands; or who, being parties as aforesaid, at any time shall wittingly and willingly put in use, avow, maintain, justify or defend the same or any of them as true and done, had or made in good faith, or upon good consideration, or shall sell, alien or assign any of the lands, tenements, hereditaments, goods, chattels or other things before mentioned to him, her or them conveyed as aforesaid or any part thereof, he, she or they so offending, shall, on conviction, be fined, not exceeding one thousand dollars.

SEC. 152. If any person by false representations of his own respectability, wealth, or mercantile correspondence and connexions, shall obtain a credit thereby, defraud any person or persons of money, goods, chattels or any valuable thing, or if any person shall cause or procure others to report falsely of his honesty, wealth or mercantile character, and by thus imposing upon any person or persons, obtain credit, and thereby fraudulently get into possession of goods, wares or merchandize, or any valuable thing, every such offender shall be deemed a swindler, and on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined, not exceeding one thousand dollars and imprisoned, not exceeding six months.

SEC. 153. If any person or persons shall, knowingly and designedly, by any false pretence or pretences, obtain from any other person or persons, any *chose* in action, money, goods, wares, chattels, effects or other valuable thing whatever, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a *cheat*, and upon conviction, shall be fined, in any sum not exceeding one thousand dollars, and imprisoned, not exceeding one year, and shall be sentenced to restore the property so fraudulently obtained, if it can be done.

SEC. 154. Any person or persons, after once selling, bartering or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands, or town lot or lots, who shall again knowingly and fraudu-

lently sell, barter or dispose of the same tract or tracts of land, or town lot or lots, or any parts thereof, or shall knowingly and fraudulently execute any bond or agreement to sell or barter, or dispose of the same land or lot or lots, or any part thereof, to any other person or persons for a valuable consideration, every such offender, upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than ten years.

SEC. 155. If any person shall knowingly sell by false weights or measures, or shall knowingly use false measures at any mill, in taking toll for grinding corn, wheat, rye or other grain, he or she shall be deemed a *common cheat*, and on conviction, shall be fined, not less than two hundred dollars, and imprisoned, not exceeding three months.

DIVISION XIII. FRAUDULENT AND MALICIOUS MISCHIEF.

SECTION

156. Malicious mischief, what constitutes, and how punished.

SECTION

157. Public jail, &c., injury to, how punished.
158. Firing woods or prairie, how punished.

SECTION 156. If any person shall wilfully or maliciously cut down, break down, level, demolish, or otherwise destroy or damage any bridge, embankment or mill-dam, or break or destroy the windows or doors of any dwelling house or other house, or shall set fire to, or burn, or destroy, or procure or cause to be burnt or destroyed, any barrack, cock, crib, rick or stack of hay, corn, wheat, oats, barley or other grain of any kind, or shall cut down, girdle or destroy any fruit tree, or shade tree, or shall cut, pull down or destroy, any gate, post, railing or fence, or shall pull down, burn or destroy, any pile or piles of wood, boards or planks, or other lumber, or shall overturn any cart, wagon or other carriage, or shall run them into sloughs, holes or other places, or shall cut loose or set adrift, any canoe, ferry-flat, skiff, boat or other vessel, for mischief, or shall unlawfully, wantonly, wilfully or maliciously, kill, wound, disfigure or destroy, any horse, mare, filly, colt or gelding, or any bull, ox, steer, bullock, cow, heifer or calf, or any sheep or lamb, or any hog, pig or dog, or any other useful animal, being the property of another, every person so offending, on conviction, shall be fined, not exceeding one hundred dollars, or imprisoned, not exceeding three months, or both.

SEC. 157. If any person shall, wilfully and intentionally, break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail or other place of confinement, every person so offending, shall, upon conviction, be fined, in any sum not exceeding five thousand dollars, nor less than the value of such jail or other place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act.

SEC. 158. If any person or persons shall, at any time hereafter, wilfully and intentionally, or negligently and carelessly, set on fire, or cause to be set on fire, any woods, prairies or other grounds whatsoever, in the inhabited parts of this State, every person so offending, shall, on conviction, be fined, in any sum not less than five dollars, nor more than one hundred dollars: *Provided*, That this section shall

not extend to any person who shall set on fire or cause to be set on fire, any woods or prairies adjoining his or her own farm, plantation or inclosure, for the necessary preservation thereof from accident by fire, between the first day of March and the last day of November, by giving to his or her neighbors two days' notice of such intention: *Provided, also,* That this section shall not be construed, to take away any civil remedy, which any person may be entitled to for any injury which may be done or received in consequence of such firing.

DIVISION XIV. OFFENCES RELATIVE TO SLAVES, INDENTURED SERVANTS AND APPRENTICES.

SECTION

159. Colored slaves or servants, harboring, &c., how punished.

160. Colored persons, indentured, illegal disposition of, how punished.

SECTION

161. Minors and apprentices, keepers of public houses prohibited from harboring, &c., fine and penalty therefor.

SECTION 159. If any person shall harbor or secrete any negro, mulatto or person of color, the same being a slave or servant, owing service or labor to any other persons, whether they reside in this State, or any other State or territory, or district within the limits and under the jurisdiction of the United States, or shall in anywise hinder or prevent the lawful owner or owners of such slaves or servants, from retaking them in a lawful manner, every such person so offending, shall be deemed guilty of a misdemeanor, and fined, not exceeding five hundred dollars, or imprisoned, not exceeding six months.

SEC. 160. If any person or persons, entitled to the service or labor of any negro, mulatto or colored person, by indenture or other contract or registry made, or entered into under the laws of the late territory of Indiana or of Illinois, having a right to hold such person of color in temporary servitude, by virtue of those laws and the constitution of this State, shall hire out, or send any such negro, mulatto or colored person, or any of his or her children, to live or reside in any other State, territory or country, or shall cause, procure, or suffer it to be done, or shall sell or otherwise dispose of any such person of color, or the children of such, for the purposes aforesaid, to any citizen or resident of another State, territory or country, before the expiration of his or her term of service, every person so offending, and all purchasers of such colored persons so sold or removed, shall forfeit and lose all right and title or claim to the service of such person of color, and shall, on conviction, for each offence, be fined, not exceeding five hundred dollars, one-half to be applied to the use of the person injured, and the other half to the use of the county.

SEC. 161. If any keeper of a public house, or retailer of spirituous liquors, shall receive, harbor, entertain or trust any minor or apprentice within the age of twenty-one years, or any servant or slave, knowing them to be such, after having been cautioned or warned to the contrary by the parent, guardian, master or mistress of such minor, apprentice, servant or slave, in the presence of one or more credible witnesses; every such keeper of a public house, or retailer of spirituous liquors as aforesaid, so offending, shall, upon conviction thereof, be fined in the sum of twelve dollars, and shall, moreover, forfeit his or her license.

DIVISION XV. CONSTRUCTION OF THIS CHAPTER,
AND DUTY OF COURTS.

SECTION

- 162. Indictment, form of.
- 163. Exceptions to form of indictment.
- 164. Civil actions may be maintained for offences under this chapter.
- 165. Judges of supreme court, their duty under this chapter.
- 166. Death, punishment of, how inflicted.
- 167. Body of criminal, how may be disposed of.
- 168. Females, provisions of this chapter extended to.

SECTION

- 169. Offences herein defined, how prosecuted and punished.
- 170. When punishment discretionary, court shall determine the same.
- 171. Fines, how disposed of.
- 172. Benefit of clergy abolished.
- 173. Power of court in cases of fine.
- 174. Infamous, what crimes deemed, and disabilities therefor.

SECTION 162. Every indictment or accusation of the grand jury, shall be deemed sufficiently technical and correct, which states the offence in the terms and language of this code, or so plainly that the nature of the offence may be easily understood by the jury. The commencement of the indictment shall be in substance as follows :

State of Illinois, }
 } ss. Of the term of the circuit court, in the
 } year of our Lord; 18 .

The grand jurors, chosen, selected and sworn, in and for the county of in the name and by the authority of the people of the State of Illinois, upon their oaths present, &c. (here insert the offence, and time and place of committing the same, with reasonable certainty.)

SEC. 163. All exceptions which go merely to the form of an indictment, shall be made before trial, and no motion in arrest of judgment, or writ of error, shall be sustained, for any matter not affecting the real merits of the offence charged in such indictment. No indictment shall be quashed for want of the words "with force and arms," or of the occupation or place of residence of the accused, nor by reason of the disqualification of any grand juror or grand jurors.

SEC. 164. Nothing in this chapter contained, shall be so construed as to prevent the party or parties injured, from having and maintaining a civil action for all damages and losses, that he, she or they may have sustained in consequence of the commission of any criminal offence herein punished; and no court shall allow or entertain the plea that the private injury is merged in the crime, or in any manner affected thereby: *Provided, however,* The record of conviction shall not be used as evidence in any civil action brought on any forged writing, or to recover the damages and losses sustained by the commission of any such criminal offence.

SEC. 165. It shall be, and is hereby declared to be the duty of the judges of the supreme and circuit courts, to make a special report biennially to the legislature, of all such defects, omissions or imperfections in this code, as experience may suggest.

SEC. 166. The manner of inflicting the punishment of death, shall be by hanging the person convicted by the neck until death, at such time as the court shall direct, not less than fifteen, nor more than twenty-five days from the time sentence is pronounced, unless for good cause, the court or governor may prolong the time.

SEC. 167. The court may order, on the application of any respectable surgeon or surgeons, that the body of the convict shall, after death, be delivered to such surgeon or surgeons for dissection.

SEC. 168. This chapter shall extend to females committing any of the offences made punishable by this chapter, although they may not be expressly named. In all cases where the punishment shall be by confinement in the penitentiary, the jury shall say in their verdict for what term the offender shall be confined; and the court in pronouncing sentence, shall designate the portion of time such offender shall be confined to solitary imprisonment, and what portion to hard labor. Persons under the age of eighteen years shall not be punished by confinement in the penitentiary for any offence except robbery, burglary or arson; in all other cases, where a penitentiary punishment is or shall be provided, such person under the age of eighteen years, shall be punished by imprisonment in the county jail, for any term not exceeding eighteen months, at the discretion of the court.

SEC. 169. All offences herein defined, shall be prosecuted and punished as by this chapter is prescribed, and not otherwise; and all other offences may be punished by fine and imprisonment in the discretion of the court: *Provided*, The fine shall in no case exceed one hundred dollars, and the imprisonment six months.

SEC. 170. Whenever the punishment for any crime or misdemeanor is discretionary as to the extent or amount thereof, the court shall determine and affix the same, whether the punishment consist of corporeal punishment, imprisonment or fine.

SEC. 171. All fines imposed by virtue of any of the laws of this State, for the punishment of crimes and misdemeanors, shall, when collected, be paid into the treasury of the county where the offence shall be tried, for the use of such county, unless otherwise expressly directed: *Provided, however*, That nothing in this section contained, shall be so construed as to found or constitute a cause of challenge or objection to any grand or petit juror.

SEC. 172. The benefit of clergy, appeals of felony and trials by battle, shall be and are hereby forever abolished.

SEC. 173. The court shall have power in all cases of conviction under this chapter, when any fine is inflicted, to order, as part of the judgment of the court, that the offender shall be committed to jail, there to remain until the fine and costs are fully paid or otherwise legally discharged.

SEC. 174. Each and every person who may hereafter be convicted of the crime of rape, kidnapping, wilful and corrupt perjury or subornation of perjury, arson, burglary, robbery, sodomy or the crime against nature, incest, larceny, forgery, counterfeiting or bigamy, shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor, trust or profit, of voting at any election, of serving as a juror, and of giving testimony.

DIVISION XVI. OF PROCESS, INDICTMENT, AR-
RAIGNMENT, TRIAL, JUDGMENT, EXECUTION,
AND WRIT OF ERROR.

SECTION

175. Recognizance, how taken.
176. *Capias* shall be issued when indictment found a true bill.
177. Subpenas shall be issued, &c.; penalty for refusal to obey subpenas; attachments for witnesses, how issued.
178. *Venire* not necessary in criminal cases, *tales* may be ordered when pannel exhausted.
179. Prosecutor to be indorsed on "true bill" found by grand jury, except in certain cases; when prosecution deemed malicious, prosecutor liable for costs.
180. Persons charged with crime, to be furnished with copy of indictment and list of jurors and witnesses.
181. Prisoner may plead "not guilty."
182. When prisoner stands mute, plea of "not guilty" to be entered.
183. When prisoner pleads "guilty" court shall explain consequences, and if prisoner persists, court may render judgment.
184. Challenge of jurors allowed.
185. Jury *de mediate lingue* not allowed.
186. Offence committed on county line, may be tried in either county.
187. Grand jury to hear witnesses on behalf of people only, and may find indictment on oath of

SECTION

- one witness, except in cases of treason and perjury.
188. Courts to be governed by common law, except otherwise provided in this chapter.
189. When jury retires, constable or other officer shall attend; provided, in certain cases, jury may return sealed verdict.
190. Liability of officer while attending jury, and of other persons conversing with jury.
191. Offenders to pay costs when convicted.
192. Property of persons convicted under provisions of this chapter, bound from time of arrest, and execution shall issue for fines.
193. Judgment for fine and costs may be replevied.
194. Executions may be issued into any county.
195. When person confined in jail for criminal offence has no estate, may be discharged, except as otherwise provided.
196. Sureties may be released in certain cases, and defendant delivered into custody of officer.
197. Bill of exceptions shall be allowed.
198. Writ of error may be allowed upon terms specified in this section.
199. Writs of error considered writs of right, but shall not be a supercedeas unless allowed by supreme court, or one of the justices thereof; proceedings on such application.

SECTION 175. It shall be the duty of the circuit court, when any indictment shall be found as a true bill, to make an order, fixing the amount of bail to each offence bailable by law, to be indorsed on the process by the clerk; and the sheriff, coroner or other officer who shall arrest the indicted person or persons, shall let such indicted person or persons to bail, upon his, her or their entering into a recognizance, with one or more securities, in the sum or sums specified on said process: which recognizance shall be made to the people of the State, conditioned for the appearance of the indicted person or persons, on the first day of the next circuit court to be holden in and for such county, to answer the said indictment and not depart the court without leave; which recognizance shall be signed by the persons entering into the same, and certified by the officer taking it. Every recognizance so taken, is hereby declared to be valid and binding, and shall not be set aside or adjudged insufficient for want of form.

SEC. 176. It shall be the duty of the clerks of the circuit courts of each county of this State, to issue process of *capias* for the apprehension of all persons indicted in said courts respectively, to be directed to the sheriff, coroner and constable of the county where such indicted person or persons shall then be; and it shall be the duty of the sheriff, or in case of his absence or inability, of the coroner or some one of the constables of the county to which said *capias* is directed, to arrest the person or persons therein named, and to let him or them to bail, where the offence is bailable; or if the offence be not bailable, or not sufficient bail be offered, then the officer making the arrest shall bring his, her or their bodies to

the jail of the county where said *capias* is returnable, and deliver such accused person or persons, together with the *capias*, to the keeper of the jail, there to remain until discharged by due course of law. It shall also be the duty of any officer who shall take any recognizance in pursuance of this section, to return the same to the clerk by the first day of the court to which it may be returnable. It shall be lawful for any officer who has the custody of any prisoner or prisoners by virtue of this section, to pass through any counties which lie in his route between the place of arrest and the county to which he is taking such prisoner or prisoners, and to lodge or deposit said prisoner or prisoners in any jail on his route, for safe custody, for one night or more, as occasion may require; and it is hereby made the duty of the county commissioners' court of the county where such indictment shall be found, to pay to the officer who shall bring any offender or offenders from another county, his reasonable charges for such service: *Provided*, That nothing contained in this or the preceding section, shall prevent a *capias* from being issued without such indorsement, returnable *instanter*; which *capias* shall authorize and require the accused to be arrested and immediately brought into court, when he or she shall be either committed, bailed or tried, at the term at which the indictment shall be found.

SEC. 177. It shall be the duty of the clerks of the circuit courts, to issue subpoenas, either on the part of the people or of the accused in any indictment, directed as in the preceding section, to any county in this State. And every witness who shall be duly subpoenaed, and shall neglect or refuse to attend any circuit court, pursuant to the requisitions of such subpoena, shall be proceeded against and punished for contempt of the court. And attachments against witnesses who live in a different county from that where such subpoena is returnable, may be served in the same manner as *capiases* are directed to be served, out of the county from which they issue, in the preceding section.

SEC. 178. It shall not be necessary to issue a *venire* in any criminal case. And in all criminal cases where the pannel of jurors shall be exhausted, by challenges or otherwise, and whether any juror has been elected and sworn or not, it shall be competent for the court to order on their minutes a *tales* for any number of jurors, not exceeding twenty-four, returnable *instanter*, out of which persons so ordered to be summoned, it shall be lawful to empanel a jury for the trial of any criminal case; but should the *tales* ordered be insufficient, by reason of challenges or otherwise, to form an impartial jury, the court may, from time to time, make such further orders on their minutes for additional *tales men*, returnable *instanter*, until a full jury shall be obtained.

SEC. 179. No bill of indictment for false imprisonment, or wilful and malicious mischief, shall be found "a true bill" by any grand jury, unless a prosecutor is indorsed thereon by the foreman of the grand jury, with the consent of the prosecutor, except the same shall be found upon the information and knowledge of two or more of the grand jury, or upon the information of some public officer in the necessary discharge of his duty; in which case it shall be stated at the end of the indictment how the same is found, and then no prosecutor shall be required; but in cases where a prosecutor is indorsed on the indictment, and the defendant shall be acquitted on trial, the petit jury acquitting such defendant shall find, in addition to the verdict of "not guilty," whether the prosecutor had acted maliciously by instituting the prosecution or not; and whenever the petit jury shall return with a

verdict of "not guilty," that the prosecutor had acted maliciously in the premises, the court shall enter judgment for costs against the prosecutor, including a fee of three dollars to the attorney general or circuit attorney, and award execution for the same, as is done in civil cases: *Provided*, That nothing herein contained shall render the prosecutor incompetent to be a witness, either before a grand or petit jury.

SEC. 180. Every person charged with treason, murder or other felonious crime, shall be furnished, previous to his arraignment, with a copy of the indictment, and a list of the jurors and witnesses. In all other cases he or she shall, at his or her request, or the request of his or her counsel, be furnished with a copy of the indictment and a list of the jurors and witnesses.

SEC. 181. Upon the arraignment of a prisoner, it shall be sufficient, without complying with any other form, to declare, orally, by himself or herself, or his or her counsel, that he or she is not guilty; which declaration or plea shall be immediately entered upon the minutes of the court by the clerk, and the mention of the arraignment and such plea shall constitute the issue between the people of the State and the prisoner; and if the clerk should neglect to insert in the minutes the said arraignment and plea, it may and shall be done at any time by order of the court, and then the error or defect shall be cured.

SEC. 182. In all cases where the party indicted shall, on being arraigned, obstinately stand mute, or refuse to plead, standing mute or refusing to plead, shall be adjudged and taken to be a denial of the facts charged in the indictment, and the court shall order the plea of "not guilty" to be entered on the minutes, and the trial, judgment and execution shall proceed in the same manner as it would have done if the party had pleaded "not guilty."

SEC. 183. In all cases where the party indicted shall plead "guilty," such plea shall not be entered until the court shall have fully explained to the accused the consequences of entering such plea; after which, if the party indicted persist in pleading "guilty," such plea shall be received and recorded, and the court shall proceed to render judgment and execution thereon, as if he or she had been found guilty by a jury. In all cases where the court possess any discretion as to the extent of the punishment, it shall be the duty of the court to examine witnesses as to the aggravation and mitigation of the offence.

SEC. 184. Every person arraigned for any crime punishable with death, shall be admitted on his trial, to a peremptory challenge of twenty jurors, and no more; and every person arraigned for any offence, that may be punished by imprisonment for a term exceeding eighteen months, shall be admitted to a peremptory challenge of ten jurors; and in all other criminal trials, the defendant shall be allowed a peremptory challenge of six jurors. The attorney prosecuting on behalf of the people, shall be admitted to a peremptory challenge of one-half of the number of jurors that the accused is entitled to.

SEC. 185. In no case shall the right to a trial by jury *de medietate linguæ*, be allowed in criminal prosecutions.

SEC. 186. Where an offence shall be committed on a county line, the trial may be in either county divided by such line; and where any offence shall be committed against the person of another, and the person committing the offence shall be in one county, and the person receiving the injury shall be in another county, the trial may be had in either of said counties.

SEC. 187. In all complaints exhibited before the grand jury of any county, they shall hear the witnesses on behalf of the people only; and may find an indictment on the oath of one witness only, or upon the information of two of their own body, except in cases of treason or perjury, where at least two witnesses to the same fact shall be necessary; and in finding a bill of indictment, at least sixteen of the grand jury shall be present, and at least twelve of them shall agree to the finding. The foreman of the grand jury may swear or affirm all witnesses that may come before the jury.

SEC. 188. All trials for criminal offences shall be conducted according to the course of the common law, except when this chapter points out a different mode, and the rules of evidence of the common law, shall also, unless changed by this chapter be binding upon all courts and juries in criminal cases. Juries in all cases shall be judges of the law and the fact.

SEC. 189. When the jury shall retire to consider of their verdict in any criminal case, a constable or other officer, shall be sworn or affirmed to attend the jury to some private and convenient place, and to the best of his ability, keep them together without meat or drink, water excepted, unless by leave of the court, until they shall have agreed upon their verdict, nor suffer others to speak to them, and that when they shall have agreed on their verdict, he will return them into court: *Provided, however,* That in any cases of misdemeanor only, if the prosecutor for the people, and the person on trial, by himself or counsel, shall agree, which agreement shall be entered upon the minutes of the court, to dispense with the attendance of an officer upon the jury, or that the jury, when they have agreed upon their verdict, may write and seal the same, and after delivering the same to the clerk, may separate: it shall be lawful for the court to carry into effect any such agreement, and receive any such verdict, so delivered to the clerk, as the lawful verdict of any such jury.

SEC. 190. If any officer sworn to attend upon a jury, shall knowingly violate his oath or affirmation, or shall so negligently perform his duties, that the jury shall separate without leave of the court, or obtain food or drink, (except water,) or if any person not belonging to the jury, shall hold conversation with any of the jury, every person and officer so offending, shall be punished for a contempt of the court by fine and imprisonment, or both, in the discretion of the court.

SEC. 191. In all cases where any person or persons shall be convicted of any crimes or misdemeanors specified in this chapter, or of any offences at common law, the court shall give judgment that the offender or offenders so convicted shall pay the costs of the prosecution.

SEC. 192. The property, real and personal, of every person who shall be convicted of any of the offences punished by this chapter, shall be bound; and a *lien* is hereby created on the property, both real and personal, of every such offender, from the time of his or her arrest, if he or she be arrested before indictment, if not, then from the time of finding the indictment, at least so far as will be sufficient to pay the fine and costs of prosecution. And it shall be the duty of the clerk of the circuit court, at the end of each term, to issue an execution for every fine which shall have been imposed during the term, and which remains unpaid, and for all costs of conviction in criminal cases; in which execution shall be stated, the day on which the arrest was made, or indictment found, as the case may be, which execution shall be delivered to the sheriff or coroner, and shall be by him levied on all the estate, real and personal, which the defendant or defendants possessed, as his

or her own real or personal estate, on the day mentioned in such execution, and any property, real and personal, subsequently acquired by him or her; which property, so to be levied upon, shall be advertised as in civil cases, and sold for what it will bring. It shall be no objection to the selling of any property under such execution, that the body is in custody for said fine and costs.

SEC. 193. It shall and may be lawful for any person or persons, convicted of any criminal offence, to replevy the judgment for the fine and costs, or the costs only when no fine shall be imposed, by such convicted person or persons, with one or more good and sufficient freeholders entering into a recognizance before the circuit court, to the people of this State, for the payment of such fine and costs, or costs only, within five months from the date of the acknowledgment; which recognizance, so taken, is hereby declared valid in law, and to create a lien on the real estate of all such persons as shall acknowledge the same, and upon the breach thereof, the clerk is hereby authorized to issue an execution against the goods and chattels, lands and tenements of the persons who entered into recognizance, in the same manner as if it had been a judgment of the court, which execution shall be collected in the same manner as is prescribed in the preceding section. No *scire facias* shall be necessary previous to issuing such execution. In all cases where the person or persons, convicted as aforesaid, shall replevy the fine and costs, as is provided in this section, then no execution shall issue for said fine and costs, as is prescribed in the next preceding section; and further, such person or persons, after replevying the fine and costs, as aforesaid, shall not be imprisoned for such fine and costs, but such person or persons shall be wholly discharged from any imprisonment in consequence of any conviction, unless where imprisonment is by this chapter made a part of the punishment; in that case, such convicted person or persons, shall be discharged from his or her, or their imprisonment, at the expiration thereof, if he, she or they have replevied the fine and costs as aforesaid.

SEC. 194. Executions for fines and costs of prosecution, and on recognizances taken in pursuance of the preceding section, may be issued into any county in this State.

SEC. 195. Whenever it shall be made satisfactorily to appear to the circuit court, after all legal means have been exhausted, that any person who is confined in jail for any fine or costs of prosecution, for any criminal offence, hath no estate wherewith to pay such fine and costs, or costs only, it shall be the duty of the said court to discharge such person from further imprisonment for such fine and costs; which discharge shall operate as a complete release of such fine and costs: *Provided*, That nothing herein shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned, as part of his or her punishment.

SEC. 196. In all cases of bail for the appearance of any person or persons charged with any criminal offence, the security or securities of such person or persons may, at any time before judgment is rendered upon *scire facias* to show cause why execution should not issue against such security or securities, seize and surrender such person or persons, charged as aforesaid, to the sheriff of the county wherein the recognizance shall be taken; and it shall be the duty of such sheriff, on such surrender and the delivery to him of a certified copy of the recognizance by which such security or securities are bound to take such person or persons, so charged as aforesaid, into custody, and by writing acknowledge such surrender, and thereupon the security or securities shall be discharged from any such recognizance, upon payment of all costs occasioned thereby.

SEC. 197. In the trial of any person or persons, for any crime or misdemeanor, it shall be the duty of the judge before whom such trial is pending, to sign and seal any bill of exception tendered to the court during the progress thereof: *Provided*, The truth of the case be fairly stated in such bill of exceptions; and thereupon the said exceptions shall, by the clerk of the said court, be entered in the record of such trial, and become, to all intents and purposes, a part thereof.

SEC. 198. The party aggrieved by manifest and material error, appearing of record, in any capital prosecution by indictment, may be relieved by writ of error, upon complying with the following terms, to-wit: The party complaining that error has been committed, shall obtain a certified copy of the record from the clerk, and from the judge of the circuit court, or from the person who acted as prosecuting attorney on the trial, a certificate expressive of an opinion that said record contains a full and true history of the proceedings on said trial; which record, together with an assignment of the errors relied on for the reversal of the judgment, shall be presented to the supreme court, or to one of the justices thereof, in vacation; and if, after inspecting such transcript, the court or justice aforesaid, shall be of opinion that there is reasonable cause for allowing a writ of error, the same shall be granted by order indorsed on the back of said transcript. The allowance of such writ of error shall be sufficient authority to the clerk of the supreme court, to issue a supersedeas to stay the execution of the sentence of death, but not the discharge of the prisoner from jail. Where any judgment, the execution whereof has been stayed by writ of error, as aforesaid, shall be affirmed, the supreme court shall, by order, fix the time when the original sentence of death shall be executed, a copy of which order shall be sufficient authority to the sheriff for the execution of any prisoner therein mentioned, at the time specified.

SEC. 199. Writs of error in all criminal cases not capital, shall be considered as writs of right and issue of course; but no writ of error shall be a supersedeas, unless the supreme court or one of the justices thereof, in vacation, after inspecting a copy of the record, certified as in the preceding section, together with an assignment of the errors relied on for a reversal of the judgment, shall be of opinion that there is reasonable cause for allowing a writ of error, then the writ shall be granted, by order indorsed on the back of such record, in which case the clerk of the supreme court shall issue a supersedeas, which shall have the effect to stay execution of the sentence, but not to discharge the prisoner from custody. If the party applying for such writ of error shall at the time be in custody, under the authority of the judgment prayed to be superseded and the said court or justice shall be of opinion that the party obtaining such writ of error ought to be bailed until the determination of such writ of error, the said supreme court or justice may make an order to discharge such prisoner from custody, upon the prisoners entering into a recognizance to the people of the State, before the sheriff of the county where he or she shall be imprisoned, in such sum and with such security as said court or justice shall prescribe; which recognizance shall be conditioned that the prisoner will appear at the next circuit court, to be holden in the county where the trial of such prisoner took place, and at each subsequent term of the circuit court on the first days, until the determination of such writ of error, and that he will be present and submit to such order as the supreme court shall make in the premises, and will not, at any of the terms of said court, in which he shall be bound to appear by said recognizance, depart the court without leave. The recognizance so taken, shall be returned to the next circuit court, and there entered of record, and such pro-

ceedings may be thereon had, in case of a breach of the condition of such recognizance, as shall be according to the course of the common law: *Provided, however,* That in cases where corporeal punishment is inflicted, the prisoner shall in no case be bailed upon the affirmance of any judgment brought into the supreme court, by virtue of this section; the said court shall order and direct the circuit court to carry into effect the judgment of the court below. In case of affirmance, judgment shall be given for costs against the party prosecuting such writ of error, and execution shall issue thereupon from the supreme court.

DIVISION XVII. LIMITATIONS OF INDICTMENTS AND PENAL ACTIONS.

SECTION 200. Limitation of time of finding indictment, except for treason, murder, arson and forgery;	SECTION when time fixed by statute; proceedings when indictment quashed.
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SECTION 200. No person or persons shall be prosecuted, tried or punished, for any offence denominated by the common law felony, (treason, murder, arson and forgery excepted) unless the indictment for the same shall be found by a grand jury, within three years next after the offence shall have been done or committed. Nor shall any person be prosecuted, tried or punished for any misdemeanor, or other indictable offence below the grade of felony, or for any fine or forfeiture under any penal statute, unless the indictment, information or action for the same, shall be found or instituted within one year and six months from the time of committing the offence, or incurring the fine or forfeiture: *Provided,* That nothing herein contained shall extend to any person fleeing from justice: *And provided, also,* That where any suit, information or indictment, for any crime or misdemeanor, is limited by any statute, to be brought or exhibited within any other time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute: *Provided, also,* That where any indictment, information or suit, shall be quashed, or the proceedings on the same set aside or reversed, on writ of error, the time during the pendency of such indictment, information or suit, so quashed, set aside or reversed, shall not be reckoned within this statute, so as to bar any new indictment, information or suit, for the same offence.

DIVISION XVIII. GENERAL PROVISIONS.

SECTION 201. Conservators of the peace, who are constituted under the provisions of this chapter, their duties. 202. Duty of officers, when felonious offence is committed. 203. How and by whom offender may be arrested, and his examination.	SECTION 204. Recognizance of prosecutor. 205. Recognizances, how taken. 206. Recognizances may be taken in vacation, except in certain cases. 207. Warrant, by whom shall be issued, and what officers shall execute.
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SECTION

208. Any person, not an officer, may be authorized to execute warrant.
209. Prisoner may be conveyed from place of arrest, through other counties, to county where offence was committed.
210. Warrant valid, if not under seal.
211. Search warrant, when may be issued, and disposition of stolen goods, when found.

SECTION

212. When offender committed to jail, names, &c., of witnesses to be indorsed on warrant.
213. When copy of warrant of commitment demanded by prisoner, duty of officers, &c.
214. *Habeas corpus*, when issued, duty of court or judge.
215. On hearing of *habeas corpus*, judge to examine witnesses.

SECTION 201. The judges of the supreme and circuit courts in their respective circuits, and justices of the peace, in their respective counties, shall jointly and severally be conservators of the peace within their respective jurisdictions, as herein designated, and shall have full power to enforce, or cause to be enforced, all laws that now exist, or that shall hereafter be made, for the prevention and punishment of offences, or for the preservation and observance of the peace. They shall have power to cause to be brought before them, or any of them, all persons who shall break the peace, and commit them to jail, or admit them to bail, as the case may require, and to cause to come before them, or any of them, all persons who shall threaten to break the peace, or shall use threats against any person within this State, concerning his or her body, or threaten to injure his or her property, or the property of any person whatever; and also all such persons as are not of good fame, and the said judge or justice of the peace, being satisfied, by the oath of one or more witnesses, of his or her bad character, or that he or she had used threats, as aforesaid, shall cause such person or persons to give good security for the peace, or for their good behavior towards all the people of this State, and particularly towards the individual threatened. If any person against whom such proceedings are had, shall fail to give a recognizance with sufficient security, it shall be the duty of the judge or justice of the peace before whom he or she shall be brought, to commit such person or persons to the jail of the proper county, until such security be given, or until the next term of the circuit court. Such judge or justice of the peace shall also take recognizances for the appearance of all witnesses at such courts. All recognizances to be taken in pursuance of this section, shall be returnable to the next circuit court, to be holden in the proper county, where all such recognizances shall be renewed or dismissed, as the said circuit court shall, upon examination of the witnesses, deem to be just and right. And where the person or persons committed, are in jail at the sitting of such circuit court, the court shall examine the witnesses, and either continue the imprisonment, bail the prisoner, or discharge him or her, as to the said court shall appear to be right, having due regard to the safety of the citizens of this State.

SEC. 202. When any felonious offence shall be committed, public notice thereof shall be immediately given, in all public places near where the same was committed, and fresh pursuit shall be forthwith made after every person guilty thereof, by sheriffs, coroners, constables, and all other persons who shall be by any of them commanded or summoned for that purpose: every such officer who shall not do his duty in the premises shall be punished by fine, in a sum not exceeding one hundred dollars, or imprisonment, not exceeding three months.

SEC. 203. It shall be lawful for any of the aforementioned judges or justices of the peace, upon oath or affirmation being made before him, that any person or persons have committed any criminal offence in this State, or that a criminal offence has been committed, and that the witness or witnesses have just and reasonable grounds to suspect that such person or persons have committed the same, to issue his warrant under his hand, commanding the officer or person charged with the execution

thereof, to arrest the person or persons so charged, and bring him, her or them before the officer issuing said warrant, or in case of his absence, before any other judge or justice of the peace; the said judge or justice of the peace, before whom any person shall be brought in pursuance of such warrant, or shall be brought without warrant, and charged with any criminal offence, before he shall commit such prisoner to jail, admit to bail, or discharge him or her from custody, shall inquire into the truth or probability of the charge exhibited against such prisoner or prisoners, by the oath of all the witnesses attending; and shall, upon consideration, of the facts, and circumstances, then proved, either commit such person or persons, so charged, to jail, admit him, her or them, to bail, or discharge him, her or them, from custody. No justice of the peace shall admit to bail, any person or persons, charged with treason, murder, or any offence, punishable with death: *And, provided,* That in all cases where the charge is for sodomy, rape, arson, burglary, robbery, forgery or counterfeiting, it shall be the duty of any justice of the peace, whenever any person or persons shall be brought before him, for the same or either of them, to associate with himself some neighboring justice of the peace previous to the examination of the witnesses, and they two shall have power to bail such prisoner or prisoners, or commit him, her or them to jail, in case no good and sufficient bail is offered, or discharge the prisoner or prisoners, according to the proof that is adduced, and the law arising thereon. All recognizances taken in pursuance of this section, shall require the accused to appear at, and on the first day of the next circuit court, or if the court be then sitting, on some day of the term, to be therein designated.

SEC. 204. It shall be the duty of the judge or justice of the peace who shall commit any offender to jail as aforesaid, or admit him to bail, to bind by recognizance, the prosecutor, and all such as do declare any thing material to prove the offence charged, to appear before the next circuit court on the first day thereof, or if the said court shall be then sitting, on same day to be therein designated, (and in all cases at the same time and place as the person or persons accused by said witnesses shall be bound to appear,) to give evidence touching the offence so charged, and not depart the court without leave. If any person, upon being required to enter into recognizance as aforesaid, shall refuse, it shall be lawful for such judge or justice of the peace to commit him or her to jail, there to remain until he or she shall enter into such recognizance or be otherwise discharged by due course of law.

SEC. 205. All recognizances that have any relation to criminal matters, shall be taken to the people of this State, shall be signed by the person or persons entering into the same, be certified by the judge, justice of the peace or other officer taking the same, and delivered to the clerk of the circuit court, on or before the day mentioned therein for the appearance of the witness or accused therein bound. Recognizances taken in courts of record need not be signed or certified as aforesaid. Recognizances for assaults, batteries and affrays, shall be for the appearance of the accused before the justice of the peace taking the same, or before some other justice of the county, on the day appointed by the justice for the trial of the offender.

SEC. 206. Where any person shall be committed to jail on a criminal charge, for want of good and sufficient bail, except for treason, murder, or other offence punishable with death, or for not entering into a recognizance to appear and testify, any judge, or any two justices of the peace, may take such bail or recognizance in vacation, and may discharge such prisoner from his or her imprisonment. It shall be the duty of the judge or justice committing such person to jail, to indorse on the warrant of commitment, in bailable cases, in what sum bail ought to be taken.

SEC. 207. When a charge shall be exhibited upon oath, before any judge or justice of the peace, against any person for a criminal offence, it shall be the duty of the judge or justice of the peace before whom the charge shall be made, to issue his warrant for the apprehension of the offender, directed to all sheriffs, coroners and constables within the State; and it shall be the duty of any sheriff, coroner or constable, into whose hands any such warrant shall come, to execute the same within their respective counties, and if the offender shall be found therein, to arrest and convey such offender before the judge or justice of the peace who issued the warrant, or before some other justice of the peace of the same county. When any such sheriff, coroner or constable, or other person called to the assistance of such sheriff, coroner or constable, shall be in pursuit of any offender, having a warrant for the apprehension of such offender, and the offender shall cross the line into the adjoining county, such sheriff, coroner or constable, or other person, may pursue such offender into such adjoining county and make the arrest, as if such offender had been found in the county of the officer in pursuit.

SEC. 208. Any judge or justice of the peace, issuing any such warrant, may make an order thereon, authorizing a person to be named in such warrant to execute the same, and the person named in such order may execute such warrant any where in the State, by apprehending and conveying such offender before the judge or justice issuing such warrant, or before some other justice of the same county; and all sheriffs, coroners and constables, and others, when required, in their respective counties, to be aiding and assisting in the execution of such warrant.

SEC. 209. Any person or persons, officer or officers, who may have the custody of any offender or offenders, by virtue of either of the two preceding sections, may take or carry such prisoner or prisoners into any other county which may be situated on his or their way back to the county from which the said prisoner or prisoners fled, and may deposit such prisoner or prisoners in any jail on his or their route, for safe custody, for one night or more, as occasion may require. Upon their arriving in the county to which the prisoner or prisoners is or are sent, under the last preceding section, such officer or officers, person or persons, shall deliver such prisoner or prisoners into the custody of the sheriff or jailer, together with the warrant of the said judge or justice, which shall be a sufficient justification to the said sheriff or jailer, to receive and detain such prisoner or prisoners, until he, she or they obtain bail, if the offence be bailable, or be otherwise discharged by due course of law.

SEC. 210. It shall not be necessary to the validity of any warrant for the apprehension of any person charged with an offence, or warrant of commitment, or search warrant, that it be under the seal of the judge or justice of the peace granting or issuing the same; but every such warrant under the hand of the judge or justice of the peace, shall be as valid in law as if a seal were affixed. And no person shall be discharged on *habeas corpus* from his imprisonment merely by reason of defect of legal precision, or want of technical form in the warrant of commitment, but the court or judge awarding such *habeas corpus* shall, in all such cases, proceed and determine as if the *mittimus* had all legal and technical form: *Provided*, Sufficient appear on the face of the *mittimus* to ascertain for what crime or offence such prisoner or prisoners shall have been committed.

SEC. 211. It shall be lawful for any judge or justice of the peace, upon complaint made before him upon oath or affirmation, that a larceny has been committed, and that the person affirming or swearing does verily believe that the stolen goods

or other property, are or is concealed in any dwelling house, out-house, garden, yard or other place or places, to issue a warrant under his hand commanding every such dwelling house or place to be searched in the day time; and if any of the goods described in any such warrant, be found therein, then that the said goods be seized or brought before the judge or justice issuing said warrant. If, upon examination of witnesses before the judge or justice of the peace who issued said warrant, it shall be determined by such judge or justice, that the goods so brought before him have been stolen, it shall be the duty of such judge or justice, either to keep possession of, or to deliver, or cause to be delivered, such goods to the sheriff of the proper county, there to remain until the conviction of the thief, or the claimant's right be otherwise legally ascertained. If the thief shall not be indicted at the next circuit court after the goods shall be seized, and an action shall not be commenced against the person or persons in whose possession such goods shall have been found, for the recovery thereof, within one month after a circuit court shall have been held after such seizure, the said circuit court shall, at their next session, order such goods to be re-delivered to the person in whose possession they were found, which order shall be obeyed by the person in whose possession such goods may, at the time, be. In case the judge or justice of the peace shall, upon such examination as aforesaid, determine that such goods so seized had not been stolen, then the goods shall be immediately restored to the person from whose possession they were so taken.

SEC. 212. It shall be the duty of the judge or justice of the peace who shall commit any offender to jail, either because such offender is unable to procure bail for his appearance at court, or because the offence is not by law bailable, to write on the warrant of commitment the names and residences of the principal witnesses by whom the crime was proved before said judge or justice.

SEC. 213. Whenever any prisoner in the custody of the sheriff or jailer of any county, on any warrant of commitment as aforesaid, shall demand of said sheriff or jailer, a copy of said warrant of commitment, said sheriff or jailer shall indorse on the said copy the names of the witnesses written thereon as aforesaid, and any justice or judge who shall neglect to write the name or names of the witnesses aforesaid, on the warrant of commitment, or any sheriff or jailer shall neglect to indorse the name of said witness or witnesses on any copy of said commitment, each justice, judge, sheriff or jailer offending in the premises, shall be fined in the sum of twenty dollars, to be recovered by action of debt, in the name of, and for the use of any person who shall sue for the same in any court of record.

SEC. 214. Whenever a *habeas corpus* shall be issued to bring the body of any prisoner committed as aforesaid, unless the court or judge issuing the same, shall deem it wholly unnecessary and useless, the said court or judge shall issue a subpoena to the sheriff of the county where said person shall be confined, commanding him to summon the witness or witnesses therein named, to appear before such judge or court, at the time and place when and where such *habeas corpus* shall be returnable: it shall be the duty of such sheriff to serve said subpoena if it be possible, in time to enable such witness or witnesses to attend. It shall be the duty of the witness or witnesses thus served with said subpoena to attend and give evidence before the judge or court issuing the same on pain of being guilty of a contempt, and shall be proceeded against accordingly by said judge or court.

SEC. 215. On the hearing of any *habeas corpus* issued as aforesaid, it shall be the duty of the judge or court who shall hear the same, to examine the witness or

witnesses aforesaid, and such other witnesses as the prisoner may request, touching any offence mentioned in the warrant of commitment as aforesaid, whether said offence be technically set out in said commitment or not, and upon which hearing, said judge or court may either re-commit, bail or discharge the prisoner according to the facts of the case.

APPROVED: March 3, 1845.

CHAPTER XXXI.

CUMBERLAND ROAD.

SECTION

1. Removing materials from road, or injuring works on same, how punished.
2. Trespass upon road, what deemed, and penalty therefor.
3. Arrests, how made.

SECTION

4. Jurisdiction of justices and courts, and right of appeal.
5. County commissioners to have jurisdiction over roads.
6. Supervisors, their jurisdiction and duties.

SECTION 1. If any person or persons shall be guilty of removing any materials for the construction of the Cumberland road, in this State, now made or hereafter to be made and constructed; or deface, injure or destroy any of the works; or steal or destroy any tool, instrument or materials belonging to the United States, or to any person for the use of said road, he or they shall be deemed guilty and punished under the laws then existing and in force for the punishment of similar offences on individual and State property.

SEC. 2. If any person or persons shall store any combustible or other matter in or near any of the culverts or bridges, or obstruct them in any manner whatever, or encamp or build fires within or near them, or obstruct or damage any of the culverts, ditches, grades or drains; remove or deface any mile stones, or stop with teams to feed on the road, he or they shall be deemed guilty of trespass, and shall be held accountable under the existing laws; and suits may be brought against said trespassers by any agent of the government or any other person who may take upon himself to attend to the same for all such offences.

SEC. 3. In cases arising under the provisions hereof, the individual may be taken by *capias* or warrant founded on affidavit, and held to bail, or committed to jail.

SEC. 4. Suits may be brought before any justice of the peace or court having competent jurisdiction to try and hear such cases; and the right of appeal to the circuit court is reserved as in similar cases provided by law.

SEC. 5. The county commissioners' courts in each county through which the Cumberland road now passes, or may hereafter pass, shall have supervisory control over the same, whenever the same shall not be under the care or supervision of some person or persons authorized by the United States, and cause the same to be kept in repair, in the same manner as prescribed by the laws of this State for keeping in repair the State and county roads in the several counties in this State, and may make such order, and regulation concerning the same as they shall deem necessary and proper for the repair and preservation of the same.

SEC. 6. It shall be the duty of the supervisor in each road district, whenever the county commissioners' court of the county shall direct, according to the provisions of this chapter, to cause the said road to be kept in repair through his road district, in the same manner as is provided by law for keeping in repair other State and county roads, and shall cause the same to be worked upon by the persons residing in his road district; and if such supervisor shall fail, neglect or refuse to do so, he shall be liable to the same penalties for such failure, neglect or refusal, as is provided by law on other roads in his district. And if any person subject to work upon public roads in any such road district, shall fail, neglect or refuse, when required by the supervisor of such road district, to work on said road, he shall be liable to the same penalties for such failure, neglect or refusal, as is provided for like cases on other public roads, and to be recovered in the same manner, to be collected and paid as in other cases of public roads in this State.

APPROVED: March 3, 1845.

CHAPTER XXXII.

DETINUE.

SECTION

1. Actions of detinue, how brought.
2. Defendant may give bond.
3. Sheriff made defendant in certain cases.

SECTION

4. When bond forfeited, remedy of parties interested.
5. Court or judge may reduce bail, accept surrender of defendant, and cancel bond.
6. Actions, how proceeded on.

SECTION 1. In all actions of detinue, where the plaintiff shall file in the office of the clerk of the court in which such action is to be commenced, an affidavit on the oath or affirmation of the plaintiff or some other credible person, stating that the property, to recover which such action is about to be commenced, is the property of the plaintiff, stating the value thereof, and that the defendant unlawfully detains the same, the clerk shall issue a writ of *capias in detinue*, and indorse the amount so sworn to, and direct the sheriff to take bail in double that sum.

SEC. 2. It shall be the duty of any sheriff to whom a writ of *capias in detinue* shall be directed, to take the body of the defendant and commit him to the common jail of the county, unless he shall enter into a bond to the plaintiff, conditioned that if judgment shall be rendered in such action against him, he will deliver to the plaintiff the property which shall be thereby recovered, and pay all damages which shall be assessed for the detention thereof, and costs of suit: the sheriff shall return such bond with the writ, as in other cases.

SEC. 3. If any sheriff shall return any such writ executed, and shall not have the body of the defendant according to the command of the writ, or return a bond, as is provided in the preceding section, or the bond returned shall be adjudged insufficient by the court, and the defendant shall fail to perfect his bail if ruled thereto, the sheriff shall be made a co-defendant and may defend the suit upon the pleas of the defendant, and shall be subject to the same judgment and recovery as

the defendant, and be joined therein. All questions concerning the sufficiency of such bond shall be determined during the return term.

SEC. 4. When any bond as aforesaid shall be forfeited, the plaintiff shall have the same remedy against the bail, and the bail shall have the same remedy against the principal, and the sheriff, when made a co-defendant, shall have the same remedy against the principal and bail, as is or may be provided by law in cases of bail in other civil causes, and the same proceedings shall be had thereon.

SEC. 5. Any court out of which any writ as aforesaid shall issue, or any judge thereof in vacation, may reduce the sum for which bail is demanded, and the court may accept the surrender of the defendant, and cancel such bond, in the same manner, for the like causes, and with the like effect, as in other cases of bail in civil actions.

SEC. 6. All actions commenced in manner aforesaid, shall be conducted and proceeded on in all things according to the principles and usages of law in actions of detinue. If any verdict for the plaintiff shall omit the price, or value or damages for detention, the court may, at any time, award an inquiry to ascertain the same.

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CHAPTER XXXIII. DIVORCES.

SECTION

1. Divorces, for what causes, may be decreed.
2. Jurisdiction of court in such cases; proceedings, nature of, and when had.
3. Who entitled to divorce.
4. When court may refuse to grant divorce.
5. Suits for divorce, how tried; when confession of party may be used; how marriage proved.

SECTION

6. Alimony and support of children, when court may provide for.
7. Poor woman may prosecute for divorce, without paying costs.
8. Power of courts of this State to try suits brought for causes not provided for by law; to decree alimony, and provide for children.

SECTION 1. In every case in which a marriage has been, or hereafter may be contracted and solemnized between any two persons, and it shall be adjudged in the manner hereinafter provided, that either party, at the time of such marriage, was and continues to be, naturally impotent; or that he or she had a wife or husband living at the time of such marriage; or that either party has committed adultery subsequently to the marriage; or has wilfully deserted and absented himself or herself from the husband or wife, without any reasonable cause, for the space of two years, or has been guilty of extreme and repeated cruelty or habitual drunkenness for the space of two years; or has been convicted of felony or other infamous crime, it shall be lawful for the injured party to obtain a divorce and dissolution of such marriage contract; but no such divorce shall, in anywise, affect the legitimacy of the children of such marriage, except in cases where the marriage shall be declared void on the grounds of a prior marriage.

SEC. 2. The circuit court, sitting as a court of chancery, shall have jurisdiction in all cases of divorce and alimony by this chapter allowed; and the like process, practice and proceedings shall be had, as are usually had in other cases in

chancery, except as is hereinafter provided, and except that the answer of the defendant need not be on oath. The proceedings shall be had in the county where the complainant resides, and the process may be directed to any county in the State.

SEC. 3. No person shall be entitled to a divorce in pursuance of the provisions of this chapter, who has not resided in the State one whole year previous to filing his or her bill or petition, unless the offence or injury complained of was committed within this State, or whilst one or both of the parties resided in this State.

SEC. 4. If it shall appear to the satisfaction of the court, that the injury complained of, was occasioned by collusion of the parties, or done with the assent of the complainant for the purpose of obtaining a divorce, or that the complainant was consenting thereto, or that both parties have been guilty of adultery, when adultery is the ground of complaint, then no divorce shall be decreed.

SEC. 5. In all cases for a divorce, where the defendant shall appear and deny the charges in the complainant's bill or petition alleged, the same shall be tried by a jury; but if the bill or petition shall be taken for confessed, the court may proceed to a hearing of the cause, by examination of witnesses in open court; and no confession of the defendant shall be taken as evidence, unless the court or jury shall be satisfied that such confession was made in sincerity, and without fraud or collusion, to enable the complainant to obtain a divorce. But any marriage which may have been celebrated or had in any foreign State or country, may be proved by the acknowledgment of the parties, their co-habitation, and other circumstantial testimony.

SEC. 6. When a divorce shall be decreed, it shall and may be lawful for the court to make such order touching the alimony and maintenance of the wife, the care, custody and support of the children, or any of them, as from the circumstances of the parties and the nature of the case, shall be fit, reasonable and just. And in case the wife be complainant, to order the defendant to give reasonable security for such alimony and maintenance, or may enforce the payment of such alimony and maintenance in any other manner consistent with the rules and practice of the court. And the court may, on application, from time to time, make such alterations in the allowance of alimony and maintenance, as shall appear reasonable and proper.

SEC. 7. Any woman suing for a divorce, who shall make it appear satisfactorily to the court, that she is poor and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her complaint without costs, and in such cases, no fees shall be charged by the officers of the court.

SEC. 8. In addition to the causes herein before provided, for divorces from the bands of matrimony, courts of chancery in this State shall have full power and authority to hear and determine all causes for a divorce, not provided for by any law of this State. The same rule of proceeding shall be had as in other cases in chancery, and upon hearing of the bill, or bill and answer, and proofs and exhibits, if the court shall be satisfied of the expediency of decreeing a dissolution of the bands of matrimony, it shall have power to do so, and to make such order with regard to the costs as it may deem right, and also to make such order with regard to the children (if any) and the right of alimony, as it may think proper.

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CHAPTER XXXIV.

DOWER.

SECTION

1. Right of dower, how acquired.
2. Widow of alien entitled to dower.
3. Right of dower in mortgaged premises.
4. When lands mortgaged for purchase money, widow not entitled to dower as against mortgagee.
5. Widow entitled to one-third of surplus when lands of deceased husband sold under mortgage.
6. Exception to right of dower.
7. Jointure, how acquired, and its effect.
8. Assent of wife to jointure, how evinced.
9. Wife may elect whether she will take jointure or dower, but shall not be entitled to both.
10. Dower in lands and share in personal estate barred by demise, unless otherwise expressed in will; but wife may elect which she will take.
11. Jointure, how may be relinquished, and dower substituted.
12. Divorce, its effects on right to jointure and dower.
13. Adultery of wife, dower forfeited thereby.
14. Wife's right to jointure or dower can not be divested, except by her own act.
15. Widow entitled to half the estate in certain cases.
16. When husband exchanges lands for other lands, choice of dower, how made.

SECTION

17. Dower, by whom and when to be set off.
18. Remedy of widow when dower not assigned as required by law.
19. Widow claiming dower, how to proceed, and duty of clerk.
20. Unknown persons interested, how proceeded against, and their remedy in certain cases.
21. When claim to dower contested, what proceedings to be had.
22. Guardians, when may be appointed.
23. Petitions for dower, how determined.
24. Commissioners, how appointed, and their duties.
25. Extent of right of widow to dower when legally set off.
26. When widow has claim to dower in lands in different counties, how to proceed.
27. Widow's right till assignment of dower.
28. When estate not susceptible of division, how to proceed.
29. Reports of commissioners, and order of court thereon.
30. Waste, penalty therefor.
31. Who may petition for assignment of dower.
32. Compensation of commissioners.
33. On death of widow, how dower disposed of.
34. Dower not relinquished by widow as executrix or administratrix of husband's estate, unless specified in deed of conveyance.

SECTION 1. A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless the same shall have been relinquished in legal form. Equitable estates shall be subject to the widow's dower, and all real estate of every description contracted for by the husband in his life time, the title to which may be completed after his decease.

SEC. 2. The widow of an alien shall be entitled to dower of the estate of her husband, in the same manner as if such alien had been a native born citizen of the United States.

SEC. 3. Where a person seized of an estate of inheritance in land, shall have executed a mortgage of such estate before marriage, his widow shall, nevertheless be entitled to dower out of the lands mortgaged, as against every person, except the mortgagee, and those claiming under him.

SEC. 4. Where a husband shall purchase lands during coverture, and shall mortgage such lands to secure the payment of the purchase money thereof, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to her dower as against all other persons.

SEC. 5. When, in the cases specified in the two preceding sections, the mortgagee or those claiming under him, shall, after the death of such husband, cause the

land mortgaged to be sold, either under a power contained in the mortgage, or by virtue of the judgment or decree of a court, and any surplus shall remain, after the payment of the moneys due on such mortgage, and the costs and charges of sale, such widow shall be entitled to the interest or income of one-third part of such surplus, for life, as her dower.

SEC. 6. A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he have acquired an absolute estate during the marriage.

SEC. 7. When an estate in land shall be conveyed to a person and his intended wife, or to such intended wife alone, or to any person in trust for such person and his intended wife, or in trust for such intended wife alone, for the purpose of creating a jointure for such intended wife, and with her assent, to be taken in lieu of dower, such jointure shall be a bar to any right or claim for dower of such wife, in any land of her husband.

SEC. 8. The assent of the wife to such jointure, shall be evinced, if she be of full age, by her becoming a party to the conveyance by which it shall be settled; if she be an infant, by her joining with her father or guardian in such conveyance.

SEC. 9. If, before her marriage, but without her assent, or if, after her marriage, land shall be given or assured for the jointure of a wife, in lieu of dower, she shall make her election, whether she will take such jointure, or whether she will be endowed of the lands of her husband, but she shall not be entitled to both.

SEC. 10. Every devise of land, or any estate therein, by will, shall bar her dower in lands, or of her share in personal estate, unless otherwise expressed in the will; but she may elect whether she will take such devise or bequest, or whether she will renounce the benefit of such devise or bequest, and take her dower in the lands, and her share in the personal estate of her husband.

SEC. 11. When a woman shall be entitled to an election under either of the two last preceding sections, she shall be deemed to have elected to take such jointure or devise unless within one year after the authentication or probate of the will, she shall deliver or transmit to the court of probate of the proper county, a written renunciation, which may be in the following form, to-wit: "I, A. B., widow of C. D., late of the county of _____ and State of _____, do hereby renounce and quit all claim to the benefit of any jointure, bequest or devise made to me by the last will and testament of my said deceased husband, which has been exhibited and proved according to law, (or otherwise, as the case may be,) and I do elect to take in lieu thereof, my dower or legal share of the estate of my said husband." Which said letter of renunciation shall be filed in the office of the probate justice of the peace, and shall operate as a complete bar against any claim which such widow may afterwards set up, to any provision which may have been thus made for her in such jointure, or in the will of any such testator, in lieu of dower; and by thus renouncing all claims, as aforesaid, such widow shall thereupon be entitled to dower in the lands, or share in the personal estate of her husband.

SEC. 12. If any woman shall be divorced from her husband for the fault or misconduct of such husband, except where the marriage was void from the beginning, she shall not thereby lose her dower, nor the benefit of any such jointure; but if such divorce be for her fault or misconduct, she shall forfeit the same; and when a divorce is obtained for the fault and misconduct of the husband, he shall lose his right to be *tenant by the curtesy* in the wife's lands, and also any estate granted therein by the laws of this State.

SEC. 13. If a wife voluntarily leave her husband and commit adultery, she shall be forever barred her dower, and of the benefit of any such jointure, unless her husband be voluntarily reconciled to her, and suffer her to dwell with him.

SEC. 14. No act, deed or conveyance, performed or executed by the husband, without the assent of his wife, evinced by the acknowledgment thereof, in the manner required by law, shall pass the estate of a married woman; and no judgment or decree confessed or recovered against him, and no laches, default, covin, forfeiture or crime of the husband, shall prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof, if otherwise entitled thereto.

SEC. 15. If a husband die, leaving a widow, but no children, nor descendants of children, such widow may, if she elect, have in lieu of her dower in the estate of which her husband died seized, whether the same shall have been assigned or not, absolutely and in her own right, as if she were *sole*, one-half of all real estate which shall remain after the payment of all just debts and claims against the deceased husband: *Provided*, That in case dower in such estate shall have been already assigned, she shall make such new election, within two months after being notified of the payment of such debts and claims.

SEC. 16. If a husband, seized of an estate of inheritance in lands, exchange it for other lands, his widow shall not have dower of both, but shall make her election as hereinbefore provided, to be endowed of the lands given, or of those taken in exchange; and if such election be not evinced, by the commencement of proceedings for the recovery and assignment of her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

SEC. 17. It shall be the duty of the heir at law, or other person, having the next estate of freehold or inheritance in any lands or estate of which the widow is entitled to dower, to lay off and assign such dower as soon as practicable after the death of the husband of such widow.

SEC. 18. If such heir or other person shall not within one month next after the decease of said husband, assign and set over to the widow of the deceased to her satisfaction, her dower in, and to all lands, tenements and hereditaments, whereof by law she is or may be dowable according to the true intendment of law, then such widow may sue for, and recover the same, in the manner hereinafter prescribed, against such heir or other person having the next immediate estate of freehold or inheritance, or tenant in possession, or other person or persons claiming right or possession in said estate.

SEC. 19. Every widow claiming dower, may file her petition in chancery, in the circuit court of the county, against the parties aforesaid, stating their names, if known, setting forth the nature of her claim, and particularly specifying the lands, tenements and hereditaments in which she claims dower, and praying that the same may be allowed to her; and the clerk shall thereupon issue a summons to the parties to appear at the next term of the said court to answer the complaint, which shall be served by the sheriff as other writs and process. If the parties do not reside in the county, said clerk shall cause an advertisement to be published, as provided in sections eight, forty-one, and forty-two of chapter twenty-one of the Revised Statutes, notifying said parties that such petition is filed, and requiring them or any of them to appear at the next term of the circuit court and show cause why such dower should not be assigned; and which publication shall be deemed due notice,

and the parties aforesaid or any other person interested therein, may appear and contest the widow's right to dower.

SEC. 20. If there be persons interested in the same, whose names are unknown, it shall be lawful to make such persons parties to such suits or proceedings, by the name and description of persons unknown, or unknown heirs or devisees of any deceased person who may have been interested in the subject matter of the suit previous to his or her death; but in all such cases, an affidavit shall be filed by the party desiring to make any unknown person a party, stating that the names of such persons are unknown; and process shall be issued against all parties by the name and description given as aforesaid; and notices given by publication, as is required in the preceding section, shall be sufficient to authorize the court to hear and determine the suit as though all parties had been sued by their proper names; and all decrees, orders, judgments and proceedings had or made under the provisions of this chapter, respecting such unknown persons as aforesaid, shall be as binding and conclusive upon the persons and parties interested, as though they had been sued by their proper names: *Provided*, That if any person residing out of this State as aforesaid, against whom a decree is, or shall be made, his heirs, devisees, executor, administrator or assigns, as the case may require, shall, within one year after notice in writing given him or them of such decree, or within three years after such decree, if no such notice shall have been given as aforesaid, appear in open court and petition to be heard touching the matter of such decree, and shall pay such costs as the court shall deem reasonable in that behalf, the person so petitioning, may appear and answer the complainant's bill, and thereupon, such proceedings shall be had as if the defendants had appeared in due season, and no decree had been made. The decree shall, after three years from the making thereof, if not set aside in manner aforesaid, be deemed and adjudged confirmed against such non-resident defendant, and all persons claiming under him by virtue of any act done subsequent to the commencement of such suit; and at the end of the said three years, the court may make such further order in the premises as shall be required, and shall be just.

SEC. 21. Answers to such petition shall be sworn to; and in all cases where the claim of the widow to dower may be contested, the parties contesting the same shall be required to enter their appearance to the action, and the court shall thereupon proceed to try the cause, or direct an issue for that purpose, as the circumstances of the case may require.

SEC. 22. Where any of the parties defendants are minors, and under age, and without guardians, the court shall appoint guardians *ad litem* for such minors.

SEC. 23. Petitions for the recovery and assignment of dower, shall be heard and determined by the court, upon the petition, answer, exhibits and other testimony, without the necessity of formal pleading.

SEC. 24. Where the court adjudges that the widow shall recover dower, it shall be so entered of record, together with a description of the land out of which she is to be endowed; and said court shall thereupon appoint three commissioners, not connected with any of the parties, either by consanguinity or affinity, and entirely disinterested; each of whom shall take the following oath, to be administered by the court, or some justice of the peace: "I do solemnly swear, that I will fairly and impartially allot and set off to A. B., widow of C. D., her dower, out of the lands and tenements described in the order of the court for that purpose, if the same can be made, consistent with the interest of the estate, according to the best of my judgment, so help me God."

SEC. 25. The commissioners shall set off and allot to said widow her dower by metes and bounds, according to quality and quantity of all the lands, tenements and hereditaments described in said order of court: *Provided*, The widow shall have the homestead or dwelling house of the husband, if she desire it; and make return in writing under their hands and seals to said court; which, if approved by said court, shall vest in her an estate in the lands and tenements so set off and allotted to her, for and during her natural life; or if such estate shall have been set off and allotted to said widow by virtue of section fifteen of this chapter, such estate shall be vested in her absolutely, in fee simple, and of inheritance forever, subject to her absolute use, control and disposition, as though her interest therein had been acquired by her when *sole*.

SEC. 26. When a widow has claim to dower in lands lying in different counties, she may proceed in the circuit court of the county where the lands lie; or if such lands lie in different counties, then in the county in which the major part of such lands lie; but if the major part thereof do not lie in any one county, then in any county in which any of the lands lie: and make recovery in the manner as is herein directed; and in all cases when the report assigning dower shall be approved, the court shall forthwith cause the widow to have possession, by a writ directed to the sheriff for that purpose, and such widow shall also be entitled to reasonable damages, to be awarded her from the time of her demand, and refusal to assign her her reasonable dower; which may be assessed by the court; or a jury, if required, shall be impaneled for that purpose, and execution may issue therefor.

SEC. 27. The widow may, in all cases, retain the full possession of the dwelling house in which her husband most usually dwelt next before his death, together with the out-houses and plantation thereto belonging, free from molestation and rent until her dower be assigned.

SEC. 28. If the commissioners aforesaid, shall report that the lands or other estate is not susceptible of a division without great injury thereto, a jury shall be impaneled to inquire of the yearly value of the widow's dower therein, and shall assess the same accordingly; and the court shall thereupon render a judgment, that there be paid to such widow as an allowance in lieu of dower, on a day therein named, the sum so assessed, as the yearly value of her dower, and the like sum on the same day in every year thereafter, during her natural life; and such jury shall, moreover, if the same has been done, assess the damages which may have accrued, down to the time of rendering the verdict.

SEC. 29. Commissioners appointed to assign dower, may make reports to the court during the same term at which they were appointed; and the court may, at such term, make all such orders upon such reports, as may be necessary to a final disposition of the case.

SEC. 30. No woman that shall be endowed of any lands, tenements and hereditaments, shall wantonly or designedly commit or suffer any waste thereon, on penalty of forfeiting that part of the estate whereupon such waste shall be made, to him or them that have the immediate estate of freehold or inheritance in remainder or reversion, (and in case of negligent or inadvertent waste,) by her done or suffered; the damages that may be assessed for such waste, to be recovered by action of waste.

SEC. 31. Heirs, or if under age, their guardians, or any other persons interested in lands, tenements or hereditaments, may also petition the court to have the widow's dower assigned, which shall be proceeded in in the same manner as is prescribed in other cases

SEC. 32. Commissioners appointed to assign dower, shall be allowed each one dollar per day, to be taxed as other costs.

SEC. 33. At the death of any widow who hath dower in lands or estate of her deceased husband, such lands or estate shall descend in accordance with the will of such husband; or if the husband shall have died intestate, then to descend in accordance with the law providing for the distribution of intestates' estates.

SEC. 34. No widow who shall, as executrix or administratrix, sell and convey by order of court, for the payment of debts, real estate of her husband, in which she shall be by law entitled to dower, shall be deemed to relinquish her right of dower therein, by reason of such conveyance, unless her relinquishment shall be specified in such deed or conveyance.

APPROVED: March 3, 1845.

CHAPTER XXXV. DROVERS.

SECTION

1. Drovers driving away stock, how punished.
2. Suit may be commenced by *capias*, on affidavit filed; effect of affidavit.

SECTION

3. After judgment, *fieri facias* may issue without affidavit.

SECTION 1. Whenever any drover or other person or persons engaged in driving horses, cattle, mules, hogs or sheep through any part of the State of Illinois, shall drive off, or shall knowingly and willingly suffer or permit to be driven off from the premises of any citizen of said State, or from the range in which the stock of any such citizen usually run, to any distance, exceeding five miles from such premises or range, any horses, mules, neat cattle, hogs or sheep, belonging to such citizen, it shall be lawful for the owner of any such stock so driven off, to follow and reclaim the same wherever it may be found; and for the taking and driving away, or suffering or permitting* to be driven away, of such stock, the said owner shall be entitled to recover of and from said drover or other person or persons guilty thereof, for each head of horses, mules, neat cattle, hogs or sheep, so driven away, twice the value thereof, to be recovered in an action of debt before any justice of the peace of the proper county, or any court having competent jurisdiction thereof: *Provided, however,* That if the drover shall not pass any habitation within said five miles, and shall separate said cattle or other stock from the drove at the next habitation, in such case, said action shall not accrue to the owner of the said property.

SEC. 2. In any action commenced under the preceding section, a *capias* may issue against the defendant or defendants, upon the plaintiff stating on oath that he believes some one or more of his cattle or other stock has been driven off by a drover, and that he believes the same to be of a certain value, to be indorsed on the writ, and the proceedings thereon shall be the same as in other actions commenced by *capias*: *Provided, however,* That no exception shall be taken to the form of the oath aforesaid.

SEC. 3. Whenever judgment shall be rendered against any person or persons, under the provisions of this chapter, by any justice of the peace, a *feri facius* may issue thereon against the goods and chattels of any such defendant or defendants, without affidavit as required in other cases.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Act, No. 13.]

CHAPTER XXXVI. EJECTMENT.

SECTION

1. Actions of ejectment, how brought.
2. Writ of right may be brought, by widow to recover dower.
3. Valid interest necessary to authorize suit.
4. Occupant made defendant, and if no occupant, then supposed owner.
5. Action, how commenced.
6. Use of fictitious names, &c., abolished.
7. Averment, what to contain.
8. Declaration, what it shall state.
9. When action not brought to recover dower, declaration may contain several averments.
10. Notice in writing, what to contain.
11. Copy of declaration to be left with occupant.
12. When premises not occupied, declaration to be left with defendant named therein.
13. Rule may be entered, requiring defendant to appear in twenty days.
14. Authority to bring suit, when to be exhibited.
15. Authority and evidence thereof.
16. When application may be dismissed at defendant's costs.
17. Defendant may demur, or plead general issue, and effect thereof.
18. Consent rule abolished.
19. Right to premises, how may be proved.
20. Lease, &c., need not be proved, but rules of evidence not impaired.
21. When action brought by co-tenants, what shall be proved.
22. When joint possession proved, verdict shall be against all defendants in action.
23. When defendants occupy distinct parcels, plaintiff may elect which to proceed against.
24. Verdict, how rendered in certain cases.
25. Verdict, how made when plaintiff's right expires after commencement of suit.
26. Death, actions shall not abate by reason of.
27. Judgment, effect of, in certain cases.
28. Writ of possession, form of.
29. Judgment conclusive as to title, subject to exceptions.
30. Judgment may be vacated, and new trial granted.
31. Judgment by default conclusive after two years.
32. Exceptions, wherein actions may be brought after two years.

SECTION

33. Heirs may commence action in certain cases after time above limited.
34. Right of plaintiff to possession, not affected by vacations of judgment; but if defendant recover in new trial, shall be entitled to writ of possession.
35. Right of defendant when new trial granted.
36. Plaintiff recovering judgment, entitled to damages for rents and profits.
37. *Mesne* profits, when claimed, how to be recovered.
38. Suggestion for claim of *mesne* profits, form of, and how served.
39. Defendant may plead general issue of non-assumpsit, &c.
40. Issue of fact, how tried, and effect of.
41. Right of parties to recover *mesne* profits; improvements.
42. Writ of inquiry shall be issued in certain cases.
43. Upon execution of writs of inquiry, how parties to proceed.
44. Plaintiff in ejectment dying, personal representatives may proceed.
45. Dower, in action to recover, how plaintiff to proceed; dower how assigned.
46. Compensation of commissioners.
47. When person is evicted from land; having title deduced from record, shall be exempt from prosecution for profits, &c.
48. Judgment of eviction, when given, court shall appoint seven persons, who shall assess value of improvements, damages, &c.
49. Assessors as aforesaid, their further duties.
50. Commissioners shall estimate value of lands in dispute.
51. Commissioners shall take oath, and have power to call witnesses for profits, &c.
52. Estimate of value to be made separately; compensation of commissioners, how allowed; improvements, proviso concerning.
53. Power of court further defined.
54. Notice of adverse claim, how may be given.
55. Effect of notice.
56. Waste, court may issue precepts to stay.
57. Lessee of United States may maintain action of ejectment.

SECTION 1. The action of ejectment shall be retained, and may be brought in the cases and the manner heretofore accustomed, subject to the provision hereinafter contained.

SEC. 2. It may also be brought—

1st. In the same cases in which a writ of right may now be brought by law to recover lands, tenements or hereditaments, and by any person claiming an estate therein in fee or for life, either as heir, devisee or purchaser.

2d. By any widow entitled to dower, or by a woman so entitled and her husband, after the expiration of six months from the time her right accrued, to recover her dower of any lands, tenements or hereditaments.

SEC. 3. No person shall recover in ejectment, unless he has, at the time of commencing the action, a valid subsisting interest in the premises claimed, and a right to recover the same, or to recover the possession thereof, or of some share, interest or portion thereof, to be proved and established at the trial.

SEC. 4. If the premises for which the action is brought, are actually occupied by any person, such actual occupant shall be named defendant in the declaration; if they are not so occupied, the action shall be brought against some person exercising acts of ownership on the premises claimed, or claiming title thereto, or some interest therein, at the commencement of the suit.

SEC. 5. The action shall be commenced by the service of a declaration, in which the names of the real claimants shall be inserted as plaintiffs; and all the provisions of law concerning lessors of a plaintiff, shall apply to such plaintiffs.

SEC. 6. The use of fictitious names of plaintiffs or defendants, and of the names of any other than the real claimants and the real defendants, and the statements of any lease or demise to the plaintiff, and of an ejectment by a casual or nominal ejector, are hereby abolished.

SEC. 7. It shall be sufficient for the plaintiff to aver in his declaration that (on some day therein to be specified, and which shall be after his title accrued) he was possessed of the premises in question, (describing them as hereinafter provided) and being so possessed thereof, that the defendant afterwards, (on some day to be stated) entered into such premises, and that he unlawfully withholds from the plaintiff the possession thereof, to his damage any nominal sum the plaintiff shall think proper to state; and the premises so claimed shall be described in such declaration with convenient certainty, so that, from such description, possession of the premises claimed, may be delivered. If such plaintiff claims any undivided share or interest in any premises, he shall state the same particularly in such declaration.

SEC. 8. If the action be brought for the recovery of dower, the declaration shall state that the plaintiff was possessed of the one undivided third part of the premises, as her reasonable dower, as widow of her husband, naming him. In every other case the plaintiff shall state whether he claims in fee, or whether he claims for his own life, or the life of another, or for a term of years, specifying such life or the duration of such term.

SEC. 9. In any case other than where the action shall be brought for the recovery of a dower, the declaration may contain several counts, and several parties may be named as plaintiffs jointly in one count, and separately in others.

SEC. 10. To such declaration there shall be subjoined a notice, in writing, by the plaintiff or his attorney, addressed to the defendant, and notifying him—

1st. That the said declaration will be filed on some day in the then next term of the court in which the action is brought, specifying such day; or, if the same be served during the term of any court, that it will be filed on some day in such term, specifying the same.

2d. That, upon filing the same, a rule will be entered requiring such defendant to appear and plead to such declaration, within twenty days after the entry of such rule; and,

3d. That, if he neglect so to appear and plead, a judgment by default will be entered against him, and the plaintiff will recover possession of the premises.

SEC. 11. If the premises are actually occupied, the declaration shall be served by delivering a copy thereof, with the notice above prescribed, to the defendant named therein who shall be in the occupancy thereof, or by leaving the same with some white person of the family, of the age of ten years or upwards, at the dwelling house of such defendant, if he be absent.

SEC. 12. If the premises claimed are not actually occupied, the declaration and notice shall be served on the defendant named therein, or, if he can not be found, by leaving the same with some white person, of the age of ten years or upwards, at the residence of the defendant; but where the declaration shall have been served in any other manner than upon the defendant personally, no rule to plead shall be entered without the special order of the court.

SEC. 13. Instead of the rule to appear and enter into the consent rule as heretofore accustomed, the plaintiff, on the day specified for that purpose in the notice aforesaid, or on some day thereafter, upon filing the declaration with an affidavit of the service of a copy thereof, and of the notice hereinbefore required, shall be entitled to enter a rule requiring the defendant to appear and plead within twenty days after the entering of such rule; and in case the defendant shall neglect so to appear and plead within such time, his default shall be entered.

SEC. 14. A defendant in ejectment may, at any time before pleading, apply to the court, or to any judge thereof in vacation, to compel the attorney for the plaintiff to produce to such court or officer, his authority for commencing the action in the name of any plaintiff therein. Such application shall be accompanied by an affidavit of the defendant, that he has not been served with proof, in any way, of the authority of the attorney to use the name of the plaintiff stated in the declaration.

SEC. 15. Upon such application, the court or officer shall grant an order requiring the production of such authority, and shall stay all proceedings in the action until the same shall be produced. Any written request of such plaintiff or his agent to commence such action, or any written recognition of the authority of the attorney to commence the same, duly proved by the affidavit of such attorney, or other competent witness, shall be sufficient presumptive evidence of such authority.

SEC. 16. If it shall appear that, previous to such application by any defendant, he was served with a copy of the affidavit of the plaintiff's attorney, showing his authority to bring such action, such application shall be dismissed; and such defendant shall be liable for the costs of such application, the payment of which may be compelled by attachment as in other cases, which may be issued upon proof of disobedience to the order of the court or officer directing the payment of such costs.

SEC. 17. The defendant may demur to the declaration as in personal actions, or he shall plead the general issue only, which shall be that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff, as alleged in the declaration; and the filing of such plea or demurrer shall be deemed an appearance in the cause; and upon such plea, the defendant may give the same matter in evidence, and the same proceedings shall be had, as upon the plea of not guilty in the present action of ejectment, except as herein otherwise provided. The defendant may likewise give in evidence any matter, which if pleaded in the present writ of right, or action of dower, would bar the action of the plaintiff.

SEC. 18. The consent rule heretofore used is hereby abolished.

SEC. 19. It shall not be necessary for the plaintiff to prove an actual entry under title, nor the actual receipt of any of the profits of the premises demanded; but it shall be sufficient for him to show a right to the possession of such premises at the time of the commencement of the suit, as heir, devisee, purchaser or otherwise.

SEC. 20. It shall not be necessary on the trial for the defendant to confess, nor for the plaintiff to prove lease, entry and ouster, or either of them, except as provided in the next section; but this section shall not be construed to impair, nor in any way to affect any of the rules of evidence now in force in regard to the maintenance and defence of the action.

SEC. 21. If the action be brought by one or more tenants in common, or joint tenants against their co-tenants, the plaintiff, in addition to all other evidence which he may be bound to give, shall be required to prove, on the trial of the cause, that the defendant actually ousted such plaintiff, or did some other act amounting to a total denial of his right as such co-tenant. ♦

SEC. 22. If the action be brought against several defendants, and a joint possession of all be proved, the plaintiff shall be entitled to a verdict against all, whether they shall have pleaded separately or jointly.

SEC. 23. When the action is against several defendants, if it appear on the trial, that any of them occupy distinct parcels in severalty or jointly, the plaintiff shall elect, at the trial, against which he will proceed; which election shall be made before the testimony in the cause shall be deemed to be closed; and a verdict shall thereupon be rendered for the defendants not so proceeded against.

SEC. 24. In the following cases the verdict shall be rendered as follows:

1st. If it be shown on the trial, that all the plaintiffs have a right to recover the possession of the premises, the verdict in that respect shall be for the plaintiffs generally.

2d. If it appear that one or more of the plaintiffs have a right to the possession of the premises, and that one or more have not such right, the verdict shall specify for which plaintiff the jury find, and as to which plaintiff they find for the defendant.

3d. If the verdict be for any plaintiff, and there be several defendants, the verdict shall be rendered against such of them as were in possession of the premises, or as claimed title thereto at the commencement of the action.

4th. If the verdict be for all the premises claimed, as specified in the declaration, it shall, in that respect, be for such premises generally.

5th. If the verdict be for a part of the premises described in such declaration, the verdict shall particularly specify such part, as the same shall have been proved, with the same certainty hereinbefore required, in the description of the premises claimed.

6th. If the verdict be for an undivided share or interest in the premises claimed, it shall specify such share or interest; and if for an undivided share in a part of the premises claimed, it shall specify such share, and shall describe such part of the premises as hereinbefore required.

7th. The verdict shall also specify the estate which shall have been established on the trial, by the plaintiff in whose favor it shall be rendered, whether such estate be in fee, for his own life, or for the life of another, stating such lives; or whether it be for a term of years, and specifying the duration of such term.

SEC. 25. If the right or title of a plaintiff in ejectment expire after the commencement of the suit, but before trial, the verdict shall be returned according to

the fact, and judgment shall be entered that he recover his damages by reason of the withholding of the premises by the defendant, to be assessed; and that as to the premises claimed, the defendant go thereof without day.

SEC. 26. The action of ejectment shall not be abated by the death of any plaintiff, or of one of several defendants, after issue and before verdict and judgment, but the same proceedings may be had as in other actions, to substitute the names of those who may succeed to the title of the plaintiff so dying; in which case the issue shall be tried as between the original parties; and in case of the death of a defendant, the cause shall proceed against the other defendants.

SEC. 27. In cases where no other provision is made, the judgment in the action, if the plaintiff prevail, shall be, that the plaintiff recover the possession of the premises according to the verdict of the jury, if there was such verdict; or, if the judgment be by default, according to the description thereof in the declaration, with costs to be taxed.

SEC. 28. The plaintiff recovering judgment shall be entitled to a writ of possession, which shall be substantially in the following form:

THE PEOPLE, &c., TO THE SHERIFF, &c.:

“Whereas, A. B. has lately, in the circuit court held in and for the county of _____ by the judgment of the said court, recovered against C. D., one mes-
suage, &c., (describing the premises recovered with the like certainty as above provided,) which said premises have been and are still unjustly withheld from the said A. B. by the said C. D., whereof he is convicted, as appears to us of record; and forasmuch as it is adjudged in the said court that the said A. B. have execution upon his said judgment against the said C. D., according to the force, form and effect of his said recovery: Therefore, we command you, that, without delay, you deliver to the said A. B. possession of the premises so recovered, with the appurtenances; and that you certify to, &c., at, &c., on, &c., in what manner you shall have executed this writ. (If there be costs to be collected, the proper clause may be here inserted, or a separate execution may be issued therefor.)”

“Witness, &c.”

SEC. 29. Every judgment in the action of ejectment, rendered upon a verdict, shall be conclusive as to the title established, in such action, upon the party against whom the same is rendered, and against all persons claiming from, through or under such party, by title accruing after the commencement of such action, subject to the exceptions hereinafter named.

SEC. 30. The court in which such judgment shall be rendered, at any time within one year thereafter, upon the application of the party against whom the same was rendered, his heirs or assigns, and, upon the payment of all costs and damages recovered thereby, shall vacate such judgment, and grant a new trial in such cause; and the court, upon subsequent application made within one year after the rendering of the second judgment in said cause, if satisfied that justice will thereby be promoted, and the rights of the parties more satisfactorily ascertained and established, may vacate the judgment, and grant another new trial; but no more than two new trials shall be granted under this section.

SEC. 31. Every judgment in ejectment, rendered by default, shall, from and after two years from the time of entering the same, be conclusive upon the defendant, and upon all persons claiming from or through him by title accruing after the commencement of the action; but within two years after the entering of such judgment, on the application of the defendant, his heirs or assigns, and upon the payment

of all costs and damages recovered thereby, the court may vacate such judgment and grant a new trial, if such court shall be satisfied that justice will be promoted, and the rights of the parties more satisfactorily ascertained and established.

SEC. 32. But if the defendant in such declaration, at the time of the entering of the judgment by default, be either, 1st, within the age of twenty-one years; or, 2d, insane; or, 3d, imprisoned on any criminal charge, or in execution upon some conviction of a criminal offence for any term less than for life; or, 4th, a married woman, the time during which such disability shall continue, shall not be deemed any portion of the said two years; but any such person may bring an action for the recovery of such premises after that time, and within two years after such disability shall be removed, but not after that period.

SEC. 33. If the person entitled to commence such action shall die during the continuance of any disability specified in the preceding section, and no determination or judgment be had of or upon the title, right, or action so to him accrued, his heirs may commence such action after the time above limited for that purpose, and within two years after his death.

SEC. 34. If the plaintiff shall have taken possession of the premises by virtue of any recovery in ejectment, such possession shall not in any way be affected by the vacating of any judgment as herein provided; and if the defendant recover in any new trial hereby authorized, he shall be entitled to a writ of possession, in the same manner as if he were plaintiff.

SEC. 35. Upon any new trial granted as herein provided, the defendant may show any matters, in bar of a recovery, which he might show to entitle him to the possession of the premises if he were plaintiff in the action.

SEC. 36. The plaintiff recovering judgment in ejectment in any of the cases in which such action may be maintained, shall also be entitled to recover damages against the defendant for the rents and profits of the premises recovered.

SEC. 37. Instead of the action of trespass for *mesne* profits heretofore used, the plaintiff seeking to recover such damages, shall, within one year after the entering of the judgment, make and file a suggestion of such claim, which shall be entered, with the proceedings thereon, upon the record of such judgment, or be attached thereto, as a continuation of the same.

SEC. 38. Such suggestion shall be substantially in the same form as is now in use for a declaration in an action of assumpsit for the use and occupation, as near as may be; and it shall be served on the defendant in the same manner hereinbefore prescribed respecting the service of a declaration in ejectment; and the same rules of pleading thereto shall be observed as upon declarations in personal actions.

SEC. 39. The defendant may plead the general issue of non-assumpsit, and, under such plea, may give notice of, or may plead specially, any matter in bar of such claim, except such as were or might have been controverted in such action of ejectment; but he may plead or give notice of a recovery by such defendant, or any other person, of the same premises, or of part thereof, subsequent to the verdict in such action of ejectment, in bar or in mitigation of the damages claimed by the plaintiff.

SEC. 40. If any issue of fact be joined on such suggestion, it shall be tried as in other cases; and if such issue be found for the plaintiff, the same jury shall assess his damages to the amount of the *mesne* profits received by the defendant since he entered into possession of the premises, subject to the restrictions hereinafter contained.

SEC. 41. On the trial of such issue, the plaintiff shall be required to establish, and the defendant may controvert, the time when such defendant entered into the possession of the premises, the time during which he enjoyed the *mesne* profits thereof, and the value of such profits; and the record of the recovery in the action of ejectment shall not be evidence of such time. On such trial, the defendant shall have the same right to set off any improvements made on the premises, to the amount of the plaintiff's claim, as is now or shall hereafter be allowed by law; and in estimating the plaintiff's damages, the value of the use by the defendant of any improvements made by him shall not be allowed to the plaintiff.

SEC. 42. If no issue of fact be joined on such suggestion, or if judgment thereon be rendered against the defendant by default, on demurrer or otherwise, a writ of inquiry, to assess the value of such *mesne* profits, shall be issued, of the execution of which the same notice shall be given to the defendant, or his attorney, as in other cases.

SEC. 43. Upon the execution of such writ, the plaintiff shall be required to establish the same matters hereinbefore required in the case of an issue being joined, and the defendant may in like manner controvert the same, and make any set-off to which he shall be entitled; and the jury shall assess the damages in the same manner. The same proceedings shall be had on such writ, and it shall be returned as in other cases, with the inquisition taken thereon. Upon such inquisition, or upon the verdict of the jury in the case of the issue being joined, the court shall render judgment, as in actions of assumpsit, for use and occupation, which shall have the like effect in all respects.

SEC. 44. If the plaintiff in ejectment shall have died after issue joined or judgment therein, his personal representatives may enter a suggestion of such death, of the granting letters testamentary or of administration to them, and may suggest their claim to the *mesne* profits of the premises recovered, in the same manner, and with the like effect, as the deceased; and the same proceedings in all respects shall be had thereon.

SEC. 45. If the action be brought to recover the dower of any widow, which shall not have been admeasured to her before the commencement of such action, instead of a writ of possession being issued, such plaintiff shall proceed to have her dower assigned to her in manner following:

1. Upon the rendition of judgment, the court, upon the motion of the plaintiff, shall appoint three respectable and disinterested freeholders, commissioners for the purpose of setting off and allotting to the plaintiff her dower out of the lands described in the record; and the commissioners so appointed shall proceed in like manner, possess the like powers, and be subject to the like obligations and control, as commissioners appointed pursuant to law to make assignment of dower, and partition of real estate.

2. Upon the approval of the report of the commissioners by the court, a writ of possession shall be issued to the sheriff of the proper county, describing the premises assigned for the dower, and commanding the sheriff to put the plaintiff in possession thereof.

SEC. 46. The commissioners to be appointed under this chapter shall be allowed, as a compensation for their services, the sum of two dollars per day each, to be taxed as other costs.

SEC. 47. Every person who may hereafter be evicted from any land for which he can show a plain, clear and connected title in law or equity, deduced from the

record of some public office, without actual notice of an adverse title in like manner derived from record, shall be exempt and free from all and every species of action, writ, or prosecution for, or on account of any rents or profits, or damages, which shall have been done, accrued or incurred at any time prior to receipt of actual notice of the adverse claim, by which the eviction may be effected, provided such person obtained peaceable possession of the land.

SEC. 48. The court, who shall pronounce and give judgment of eviction, either in law or equity, shall, at the time nominate seven fit persons, any five of whom shall have power, and it shall be their duty to go on the premises, and after viewing the same, on oath or affirmation, to assess the value of all such lasting and valuable improvements which shall have been made thereon, prior to the receipt of such notice as aforesaid; and also, to assess all damages the land may have sustained by the commission of any kind of waste, or by deduction of soil by cultivation, or otherwise during the occupancy of the person evicted, and subtract the same from the estimated value of the said improvements, which assessment, signed and sealed by the persons making the same, shall be by them lodged with the clerk of the court wherein they were nominated, before the next ensuing term, or as soon thereafter as may be convenient; and at the next court, after such assessment, it shall be entered up as a judgment in favor of the person evicted, and against the successful claimant of the land, by the clerk; upon which judgment, execution shall immediately be issued by the clerk, if directed by the person evicted, unless the successful claimant shall give bond and security to be judged of by the court, to the person evicted, and to be taken at the time of entering up such judgment, conditioned to pay the same within twelve months from the date thereof, with five per cent. interest thereon: *Provided*, The balance shall ultimately be in favor of such occupying claimant, according to the directions and provisions of this chapter, which bond shall have the force of a judgment, and at the expiration of twelve months aforesaid, an execution shall be issued upon the same by the clerk of the court in which it was taken, at the request of the party entitled thereto, on oath being made that the same is yet due. Should the balance be in favor of the successful claimant, judgment in like manner shall be entered up in his favor, against the other party, for the amount of the same, upon which execution may be issued as aforesaid, unless bond and security be given to such claimant, which may be acted upon in the manner before directed, and to declare what shall be the law between adverse claimants, under distinct titles of the kinds aforesaid after notice.

SEC. 49. The persons nominated by the court as aforesaid, when making an assessment, shall carefully distinguish between such improvements, as were made on the land prior to notice, and those which were made after notice; and when making an assessment, they shall also take into consideration all such necessary and lasting improvements as shall have been made on the lands, after the receipt of such notice as aforesaid, and shall ascertain the amount of the value thereof; and they shall also take into consideration and ascertain the amount of the rent and profits arising from the whole of the improvements on the land from the time that notice of such adverse claim was received by such occupying claimant, and then after taking the amount of one from the other, the balance shall be added or subtracted from the amount of the value of the improvements which shall have been made before the receipt of the notice aforesaid, as the nature of the case shall require.

SEC. 50. The commissioners shall also estimate the value of the lands in dispute, exclusive of any improvements that shall have been made thereon, and make report of the amount of such valuation to the court, and if the value of the improvements shall exceed such estimated value of the land in dispute, in that case it shall and may be lawful for the proprietor of the better title, to transfer or convey, as the nature of the case may require, his better title to the occupying claimant, and thereupon judgment shall be entered up in his favor, against the occupying claimant, for such estimated value, upon which an execution may issue, unless the occupying claimant shall give bond and security to be approved by the court, to pay the amount of such judgment, within one year after the person transferring or conveying as aforesaid, with interest from the date, which bond shall have the force of a judgment, and if not paid at the expiration of the year, an execution may issue, in the manner before directed by this chapter: *Provided*, That the proprietor of the better title shall, in every such case, at the time of entering up judgment in his favor, give bond and security to be approved by the court, to the occupying claimant, to refund the amount of such judgment, in case the land so transferred or conveyed, shall ever thereafter be taken from him by any other prior or better claim.

SEC. 51. The persons nominated by the court, by virtue of this chapter, shall be called commissioners, and shall respectively take an oath or affirmation to do equal right to the parties in controversy; and shall also have power and authority to call witnesses, and administer the necessary oaths, and to examine them for the ascertainment of any fact material in the inquiry and assessment by this chapter directed.

SEC. 52. The said commissioners in making every estimate of value by virtue of this chapter, shall state separately the result of each, and the court shall have power to make such allowance to the said commissioners in any case, as shall seem just, which allowance shall be taxed and collected as costs: *Provided*, That this chapter shall not be extended to affect or impair the obligation of contracts, or to authorize the occupying claimant to be twice paid for his improvements; and in all cases where the occupying claimant is paid for his improvements by any other person than the proprietor of the better title, such person shall have the same redress as is allowed to the occupying claimant.

SEC. 53. The court shall have the same power to proceed by appointing commissioners to assess the value of improvements, and the damages by the commission of any kind of waste, by reduction of soil, by cultivation or otherwise, during the occupancy of the person evicted in case of arbitration, or by consent of the parties, on motion without suit.

SEC. 54. Notice of any adverse claim or title to the land within the meaning of this chapter, shall have been given by bringing a suit either in law or equity, for the same, by the one or other of the parties, and may hereafter be given by bringing a suit as aforesaid, or by delivering an attested copy of the entry, survey or patent, from which he derives his title or claim, or leaving any such copy with the party, his wife, or other free person above the age of sixteen years, on the plantation: *Provided, however*, That notice given by the delivery of an attested copy as aforesaid, shall be void, unless suit is brought within one year thereafter: *Provided*, That in no case shall the proprietor of the better title be obliged to pay to the occupying claimant for improvements made after notice, more than what is equal to the rents and profits aforesaid.

SEC. 55. Notice to any occupying claimant shall bind all those claiming from, by or through such occupying claimant, to the extent of such claim.

SEC. 56. Nothing herein contained shall be construed so as to prevent any court from issuing a precept to stay waste, and ruling the party to give bond and security in such manner as such court may think right.

SEC. 57. In all cases in which any person has heretofore entered upon and occupied, or shall hereafter enter upon and occupy, any lands, tenements or hereditaments within this State, by virtue of any lease or permit, from the United States or this State, such person, his, her or their heirs or assigns, may have and maintain an action of ejectment against any person who has or may enter upon such lands, tenements or hereditaments, without the consent of such lessee, his, her or their heirs or assigns; and proof of the right of possession shall be sufficient to authorize a recovery.

APPROVED: March 3, 1845.

CHAPTER XXXVII. ELECTIONS.

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SECTION 1. There shall be elected by general ticket, on the first Monday of November, preceding the expiration of the term of each President of the United States, as many electors of President and Vice President of the United States, as this State may be entitled to elect, which election shall be conducted and returns thereof made as hereinafter provided: *Provided*, That should Congress have fixed a different day, or shall hereafter fix a different day for such election, then the election for electors shall be held on such day fixed or to be fixed by act of Congress.

SEC. 2. The clerks of the several county commissioners' courts, shall, within eight days next after holding an election for electors as is provided for in this chapter, make three copies of the abstract of votes for electors, and transmit by mail one of said copies to the Governor or person administering the government, another to the office of the secretary of State, and retain the third in his office, to be sent for by the Governor, in case both the others should be mislaid. Within twenty days after the holding of such election, and sooner if all the returns are received by either the Governor or person administering the government, or by the secretary of State, the secretary of State, auditor of public accounts and treasurer, or any two of them, shall, in the presence of the Governor or person administering the government, proceed to open and canvass said election returns, and to declare the persons having the highest number of votes elected; but should any two or more persons be returned with an equal and the highest vote, the said secretary of State shall cause a notice of the same to be published in the paper printed by the public printer, which notice shall name some day and place, not less than five days from the time of the publication of such notice, upon which the said secretary, auditor and treasurer, will decide by lot which of said persons so equal and highest are elected; and upon the day and at the place so appointed in said notice, the said secretary, auditor and treasurer, or any two of them, shall, in the presence of the Governor or person administering the government, decide by lot which of the persons so equal and highest shall be elected.

SEC. 3. The Governor or person administering the government, shall cause the result of the said election to be published in the paper printed by the public printer, and shall transmit by mail to the persons elected, certificates of their election.

SEC. 4. The electors chosen as aforesaid, shall meet at the seat of government of this State, at the time appointed by the laws of the United States, and give their votes in the manner therein provided, and perform such duties as are or may be required by law. Each elector shall receive for every twenty miles necessary travel in going to the seat of government to give his vote, and in returning to his residence, to be computed by the most usual route, the sum of three dollars, to be paid on the warrant of the auditor, out of any money in the treasury, not otherwise appropriated.

SEC. 5. In case any person, declared duly elected an elector of President and Vice President of the United States, shall fail to attend at the state house, at the seat of government of this State, at or before the hour of twelve o'clock at noon, of the day on which his vote is required to be given, it shall be the duty of the elector or electors of President and Vice President, attending at that time and place, to appoint a person or persons to fill such vacancy: *Provided*, That should the person or persons, chosen by the people as aforesaid, arrive at the place aforesaid, before the votes for President and Vice President are actually given, the person or persons appointed to fill such vacancy, shall not act as elector of President and Vice President.

SEC. 6. All general elections for the election of Governor, Lieutenant Governor, representatives to Congress, senators and representatives to the General Assembly, and county officers, shall be held on the first Monday of August, in each year in which the said officers are hereinafter directed to be chosen; which elections shall be conducted as hereinafter prescribed.

SEC. 7. The county commissioners' courts of the several counties in this State, are hereby authorized to divide their respective counties into as many election precincts, for all general and special elections, as they may think expedient for the convenience of the voters of said county, and to appoint as many sets of judges of elections, to receive votes at the county seats, as they may think necessary; and shall designate the house or place in each precinct, and in the precinct including the county seat, the house or houses, place or places, at which elections are to be holden; and the precincts and places of holding elections, so established, shall so remain until changed by the county commissioners' court: And all general and special elections shall be held at the places so designated, until changed as aforesaid: *Provided, always*, That it shall be the duty of the county commissioners' court at any time, to change any place of holding elections, upon a petition of a majority of voters residing within the precinct.

SEC. 8. The said county commissioners' courts shall, respectively, at the last stated term preceding any election, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election in each election precinct; and the clerk of the said court shall make out and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice thereof in writing, directed to the judges so appointed; and it shall be the duty of the said sheriff, within twenty days after the receipt of said notice, to serve said notice upon each of the said judges of election.

SEC. 9. The said judges of the election shall choose two persons, having similar qualifications with themselves, to act as clerks of the election. The said judges of the election shall be and continue judges of all elections of civil officers to be held within their precinct, until other judges shall be appointed as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of the election. And the county commissioners' courts shall, from time to time, fill all vacancies which may take place in the office of judge of the election, in any election precinct within their respective counties.

SEC. 10. The clerks of the several county commissioners' courts shall, at least thirty days previous to any general election, and at least twenty days previous to any special election, make out and deliver to the sheriff of his county, three written notices thereof for each precinct, said notices to be, as nearly as circumstances will admit, as follows, to-wit: "Notice is hereby given, that on Monday, the day

of next, at the house of in precinct, in the county of an election will be held for Governor, one Lieutenant Governor, one representative to the Congress of the United States, one senator, three representatives in the General Assembly of this State, one sheriff, one coroner, three county commissioners, &c., (as the case may require,) which election will be opened at eight o'clock in the morning, and will continue open until six o'clock in the afternoon of the same day. Dated at this day of in the year of our Lord one thousand eight hundred and

A. B.,

clerk of the county commissioners' court of county."

And the said sheriff to whom such notices shall be delivered as aforesaid, shall post up in three of the most public places in each precinct, the three notices referring to such precinct, at least fifteen days before the time of holding any general election, and at least eight days before the time of holding any special election.

SEC. 11. If any person appointed to act as a judge of the election as aforesaid, shall neglect or refuse to be sworn or affirmed to act in such capacity, the place of such person shall be filled by any justice of the peace, residing within the precinct, to be nominated by the other judge or judges of the election; and if there be no other justice present to act as judge, the other judge or judges of the election shall nominate one or more capable and discreet elector or electors, residing within the precinct, to fill such vacancy or vacancies; and if there be no judge of the election present to fill such vacancy or vacancies by nomination, then such vacancy or vacancies shall be filled by the votes of such qualified electors, residing within the precinct, as may then be present at the place of election; and the justice or justices, person or persons, so elected or nominated to fill such vacancy or vacancies, shall be, and are hereby vested with the same power as if appointed by the county commissioners' court.

SEC. 12. Previous to any votes being taken, the judges and clerks of the election shall severally take an oath or affirmation, in the following form, to-wit: "I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will perform the duties of judge, (or clerk, as the case may be,) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit and abuse, in conducting the same."

SEC. 13. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed a judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oaths or affirmations to each other, and to the clerks of the election; and the person administering such oaths or affirmations, shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll-books.

SEC. 14. At all elections to be held under this chapter, the polls shall be opened at the hour of eight in the morning, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed: *Provided, however,* That if no judge shall attend at the hour of eight in the morning, and it shall be necessary for the electors present to appoint judges to conduct the election, as hereinbefore prescribed, the election may, in that case, commence at any hour before the time for closing the polls shall arrive, as the case may require: *And, provided also,* That the judges of the election may, if they shall deem it necessary, for the purpose of receiving the votes of all the electors wishing to vote, postpone the closing of the polls until twelve o'clock at night. And upon opening the polls, one of the

clerks, under the direction of the judges, shall make proclamation of the same, and thirty minutes before the closing of the polls, proclamation shall be made in like manner that the polls will be closed in half an hour.

SEC. 15. Electors shall vote, by first announcing their own names to the judges and clerks of the election, and then the names of the persons for whom they wish to vote; and the clerk shall enter their names and votes accordingly: *Provided*, That a voter may vote by presenting an open ticket to the judges, containing the names of the persons for whom he votes, and the offices; and the said judges shall read the same to the voter, and the clerks, with the assent of the voter, set the same down in their books, as in other cases.

SEC. 16. It shall be lawful for any elector to vote for Governor, Lieutenant Governor and electors of President and Vice President of the United States, at any place of holding an election within this State; for representative to Congress, at any place of holding an election within the congressional district in which such elector resides; for senator and representatives to the General Assembly, at any place of holding an election within the senatorial or representative district in which he resides; for sheriff, coroner and county commissioners, at any place of holding an election in the county in which he resides: But for justices of the peace and constables, he shall not vote out of the precinct in which he resides.

SEC. 17. If any elector shall vote more than once at any election held under the authority of this chapter, he shall be fined, in the sum of one hundred dollars, to be recovered by indictment before any court of competent jurisdiction; and the whole of such fine shall be appropriated to the use of the county in which the offence may have been committed.

SEC. 18. At any and all elections held in this State, all white male inhabitants above the age of twenty-one years, and having resided in the State six months next preceding such election, shall enjoy the right of an elector, whether such elector has been naturalized or not: *Provided*, That when any such person shall present himself to give his vote, and either of the judges shall suspect that such person does not possess the aforesaid qualification of age and residence, or either, or if his vote shall be challenged by any elector who has previously voted at such election, the judges of the election shall tender to such person the oath or affirmation in the following form: "I, A. B., do solemnly swear, (or affirm, as the case may be,) that I am a resident of the county of _____, in the State of Illinois, that I have resided in this State for the period of six months immediately preceding this election, that I have, to the best of my knowledge and belief, attained to the age of twenty-one years, and that I have not voted at this election."

SEC. 19. If any person so offering his vote at such election, shall take such oath or affirmation, or shall offer to take such oath or affirmation, as prescribed in the preceding section, his vote shall be received, unless it shall be proved by evidence satisfactory to a majority of the judges that such oath or affirmation is false; and if such person shall refuse to take such oath or affirmation, his vote shall be rejected; and if any person shall take the oath or affirmation as is before named, knowing such oath or affirmation to be false, he shall be deemed guilty of wilful and corrupt perjury, and punished accordingly.

SEC. 20. If any person shall vote at any election, who is not a qualified voter, he shall forfeit and pay any sum not exceeding fifty dollars, nor less than twenty-five, to be recovered in the same manner as other penalties under this chapter.

SEC. 21. For the preservation of order, as well as the security of the judges and clerks of the election from insult and abuse, it shall be the duty of any constable or constables residing within the precinct, who shall be designated for the purpose, by the judges of the election, to attend at all elections within such precinct; and should no constable attend at such election, the judges of election are hereby authorized and empowered to appoint one or more special constables to assist in preserving order during the election: and the judges are hereby empowered to impose a fine, not exceeding twenty dollars, on any person or persons who shall conduct in a disorderly and riotous manner, and persist in such conduct after having been warned of its consequences; and on refusal to pay the same, to commit him or them to the common jail of the county, for any time, not exceeding twenty days, or until the fine shall be paid; and the constable to whom the order shall be directed, and the jailer of the county, are hereby required to execute such order, and receive such person or persons so committed, as though it had been issued or delivered by a magistrate in due form of law.

SEC. 22. The county commissioners' court in each county, may, if necessary, appoint some constable to attend each precinct, and preserve order during said election; and the said constable shall have authority to call to his aid a sufficient number of citizens to suppress any riot or other disorderly conduct during said election, and there shall be paid to said constable out of the county treasury, a sum not exceeding one dollar a day for said services.

SEC. 23. When the votes shall have been examined and counted, the clerks shall set down in their poll books, the name of every person voted for, written at full length, the office for which such person received such vote or votes, and the number he did receive, the number being expressed in words at full length; such entry to be made as nearly as circumstances will admit, in the following form, to-wit: "At an election held at the house of in precinct, in the county of and State of Illinois, on the day of in the year of our Lord one thousand eight hundred and , the following named persons received the number of votes annexed to their respective names, for the following described offices, to-wit:

A B had fifty-three votes for Governor.

C D had fifty-one votes for Governor.

E F had sixty-two votes for Lieutenant Governor.

G H had sixty votes for Lieutenant Governor.

I K had eighty votes for representative in Congress.

L M had seventy-three votes for senator.

N O had sixty-five votes for representative.

P Q had fifty-nine votes for representative.

R S had fifty-seven votes for sheriff.

T U had twenty-two votes for coroner.

V W had thirty votes for county commissioner;

(and in the same manner for any other persons or officers, voted for.)

"Certified by us,

A B, }
C D, }
E F, }

Judges of the election.

Attest:

G H, }
I J, }

Clerks of the election."

SEC. 24. The judges of the election shall then inclose and seal one of the poll books, under cover, directed to the clerk of the county commissioners' court of the

county in which such election is held; and the packet thus sealed, shall be conveyed by one of the judges or clerks of the election, to be determined by lot if they can not otherwise agree, and delivered to the said clerk of the county commissioners' court at his office, within four days from the close of the polls; and the other poll book shall be deposited with one of the judges of the election, to be determined as aforesaid; and the poll book shall be subject to the inspection of any elector who may wish to examine it. And if any judge or clerk of an election, after having been deputed by the judges of the election at which he shall have served as judge or clerk, to carry the poll book of such election to the clerk of the county commissioners' court of the county, shall fail or neglect to deliver such poll book to the said clerk within the time prescribed by law, save, with the seal unbroken, he shall, for every such offence, forfeit and pay the sum of five hundred dollars for the use of the county, to be recovered in the name of the commissioners of the county, by an action of debt in the circuit court.

SEC. 25. On the seventh day after the close of the election, or sooner, if all the returns be received, the clerk of the county commissioners' court, taking to his assistance two justices of the peace of his county, shall proceed to open the said returns, and make abstracts of the votes in the following manner: the abstract of the votes for Governor and Lieutenant Governor shall be on one sheet, and the abstract of votes for representatives to Congress shall be on another sheet, and the abstract of votes for senator and representatives to the General Assembly shall be on another sheet, and the abstract of votes for county officers shall be on another sheet; or if the election shall have been holden for Presidential electors, the abstract of votes shall be on one sheet; and it shall be the duty of the said clerk of the county commissioners' court, immediately to make out a certificate of election to each of the persons having the highest number of votes for senator and representatives to the General Assembly, and county officers, respectively, and to deliver such certificate to the person entitled to it, on his making application for that purpose to the clerk at his office.

SEC. 26. But where two or more counties are united in one senatorial or representative district, the clerk of the county commissioners' court of the county last established, shall, within twelve days after the day of the election, attend at the office of the clerk of the county commissioners' court of the senior county, and there, in conjunction with the clerk or clerks of the senior county or counties, shall compare the votes given in the several counties composing such senatorial or representative district; and said clerks shall immediately make out a certificate of the election of the person or persons having the highest number of votes in such counties for senator or representative to the General Assembly: which certificate shall be delivered to the person entitled to it, on his application to the clerk of the county commissioners' court of the senior county, at his office; and it shall be the duty of the county commissioners' court of the county where the polls are so compared, to compute the number of miles each clerk or other person shall travel in going and returning from the county where he is so appointed, to the place of comparing the polls; and it shall be the duty of the county commissioners' court, where the polls are so compared, to make an allowance to said clerks or other persons who may take the vote of each county as aforesaid, a compensation, not exceeding six cents per mile, going to and returning from said place of comparing, to be paid equally out of the county treasuries of the respective counties in which said clerk or other person may be appointed; and it shall be the further duty of the

county commissioners' courts when the polls are so compared, to make an estimate of all the expense so incurred by the counties respectively voting together, and divide the same among said counties so voting, respectively, and shall give to each clerk or other person a certified statement of the same, under the seal of said court; and it shall be the duty of the county commissioners' court of the county where said clerk or other person shall be appointed, on the production of said certified statement, to pay to said clerk or other person the amount which appears to be due him out of the county treasury.

SEC. 27. It shall be the duty of the clerk of the county commissioners' court in each county, on the receipt of the election returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of each election may be entitled for their services, and lay the same before the next commissioners' court of the county; and the said court shall order the compensation aforesaid to be paid out of the county treasury.

SEC. 28. If the requisite number of senators or representatives, or county officers, shall not be elected by reason of any two or more persons having an equal and the highest number of votes for one and the same office, the clerk or clerks whose duty it is to compare the polls, shall give notice to the several persons so having the highest and an equal number of votes, to attend at the office of the proper clerk, at a time to be appointed by the said clerk or clerks, who shall then and there proceed publicly, to decide by lot, which of the persons so having an equal number of votes shall be declared duly elected; and the said clerk or clerks shall make out and deliver to the person thus declared duly elected, a certificate of his election as herein before provided.

SEC. 29. The clerk of the county commissioners' court, immediately after making out abstracts of votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail to the office of the secretary of State; the abstract of votes for Governor and Lieutenant Governor being addressed to the speaker of the house of representatives, and inclosed with the other abstracts to the secretary's office as aforesaid; and it shall be the duty of the secretary of State, at the opening of the succeeding session of the General Assembly, to deliver all such abstracts of votes for Governor and Lieutenant Governor, or for either of them, to the speaker of the house of representatives.

SEC. 30. The secretary of State, auditor, treasurer and attorney general, or any two of them, in the presence of the Governor, shall proceed, within fifty days after the election, and sooner if all the returns be received, to canvass the votes given for representatives to Congress; and the Governor shall grant a certificate of election to the person or persons having the highest number of votes, and shall also issue a proclamation, declaring the election of such person or persons. In case there shall be no choice, by reason of any two or more persons having an equal number of votes, the election shall be determined by lot, under the direction of the Governor, in the manner prescribed in the twenty-eighth section of this chapter.

SEC. 31. If the returns of the election of any county in this State, shall not be received at the office of the secretary of State, within thirty days after the day of election, the said secretary shall forthwith send a messenger to the clerk of the county commissioners' court of such county, whose duty it shall be to furnish the said messenger with a copy of such returns; and the said messenger shall be paid out of the State treasury the sum of ten cents for each mile he shall necessarily travel in going to, and returning from the office of the said clerk.

SEC. 32. When any vacancy shall happen in the office of senator or representative to the General Assembly, by death, removal or otherwise, it shall be the duty of the clerk of the county commissioners' court of the county, if one county only compose the senatorial or representative district, as soon as he shall have been informed thereof, to notify the Governor of such vacancy, and if there be more than one county comprised within the limits of such senatorial or representative district, it shall be the duty of the clerk of the county commissioners' court of the senior county in such district, so to notify the Governor, and the Governor shall issue a writ of election, directed to the sheriff of the county in which such vacancy shall happen, commanding him to notify the several judges of election in his county, to hold a special election to fill such vacancy or vacancies, at a time to be appointed by the Governor: *Provided*, That if there is to be no session of the General Assembly between the happening of such vacancy and the time of the general election, it shall not be necessary to order a special election to fill such vacancy.

SEC. 33. Elections to fill vacancies in either branch of the General Assembly, occurring during the sessions of the Legislature, may be held on such notice, not less than five nor more than twenty days, as the Governor may direct in the writ of election issued to fill such vacancy.

SEC. 34. If any vacancy shall happen in the office of Governor by death, resignation, removal from office, or refusal by the Governor elect to take the requisite oath of office, it shall be the duty of the secretary of State to notify the clerks of the county commissioners' courts of the several counties in this State, that at the next succeeding general election of members of the General Assembly, or electors of President and Vice President, (as the case may be,) an election will be held to fill such vacancy: *Provided, however*, That the secretary shall not give such notice, nor shall such special election of Governor take place unless the vacancy shall have happened at least forty days previous to such general election for members of the General Assembly, or of electors of President and Vice President of the United States, nor unless a regular session of the General Assembly shall intervene between the time when such vacancy shall have happened and the succeeding quadrennial election of Governor.

SEC. 35. When any vacancy shall happen in the office of sheriff or coroner, either by death, resignation or otherwise, the clerk of the county commissioners' court in which such vacancy shall happen, shall immediately notify the Governor of such vacancy; and it shall be the duty of the Governor to issue a writ of election, and direct the time when such election shall be held, the said writ to be directed to the said clerk.

SEC. 36. When any vacancy shall happen in the office of representative to Congress from this State, it shall be the duty of the Governor to issue his proclamation, appointing a day to hold a special election to fill such vacancy.

SEC. 37. If any judge of the election, or clerk, or any other officer or person in any manner concerned in conducting the election, shall wilfully neglect, improperly delay or refuse to perform any of the duties required by this chapter, after having undertaken to perform such duties, he shall forfeit and pay to the State the sum of forty dollars; and if any such judge of the election, clerk or other officer or person, in anywise concerned in conducting the election, shall knowingly admit any person to vote, not qualified according to law, or shall knowingly receive and count more than one vote from one person, at the same election for one office, or shall be guilty of fraud, corruption or partiality, or manifest misbehavior, in any

matter or thing relating to said election, each and every person so offending shall forfeit and pay to the county the sum of one hundred dollars, to be recovered in any court of record in the State, in the name of the State for the use of the county, in an action of debt, with costs of suit, or at the suit of any person who may sue for the same, one-half for the use of the person suing and the other half for the use of the county; and every such person so offending as aforesaid, shall moreover, on conviction, be rendered incapable of holding any office within this State for the term of ten years thereafter.

SEC. 38. Nothing in this chapter shall be so construed, as to prevent the judges of election from refusing to receive the vote of any person when it shall be proved to the satisfaction of a majority of them, that in taking the said oath he shall have sworn falsely. And if any judge of election shall order to be received the vote of any person who, being challenged, shall not take the oath or affirmation prescribed by law, such judge of election, so offending, shall forfeit and pay the sum of fifty dollars, to be recovered by action of debt, in the name of the State, or of any person suing therefor, the one-half of said fine for the use of the county, and the other half for the use of the person suing.

SEC. 39. If any judge or judges of election shall refuse to receive the vote of any such person so residing in this State, six months before election, and being at the time of offering his vote, twenty-one years of age, as stated in the eighteenth section of this chapter, and he shall comply or offer to comply with the eighteenth section of this chapter, then every judge, or the judges so refusing or neglecting to receive the vote of the person aforesaid, and to record it as a legal vote, shall be liable to be indicted, and on conviction, shall be fined five hundred dollars, and imprisoned, not exceeding thirty days, in the county jail; and such judge or judges may also be sued in an action on the case, by the person aforesaid, and upon proof of such refusal or neglect in said judge or judges to receive and record the vote of such person so offering to vote, damages may be recovered of such judge or judges, not exceeding five hundred dollars.

SEC. 40. If the clerk of the county commissioners' court shall neglect or refuse to perform the duties as pointed out in this chapter, he shall be liable to be indicted, and on conviction shall be fined, in a sum not exceeding five hundred dollars, and imprisoned, not exceeding thirty days, and may be sued in an action of trespass on the case, for damages, not exceeding five hundred dollars, by the person injured by reason of the neglect or refusal of such clerk.

SEC. 41. If any person shall mutilate or erase any name or figure, or word, in a poll book taken or kept at any election, or if any person shall take away such poll book from the place where it has been deposited for safe keeping, with an intention of destroying the same, or to procure or prevent the election of any person, or if any person shall destroy any poll book so taken and kept at any election, he or she shall be liable to be indicted, and on conviction, shall be fined five hundred dollars, and imprisoned, not exceeding sixty days in the county jail.

SEC. 42. When any candidate shall desire to contest the validity of any election, or the right of any person declared duly elected, to hold the office to which such candidate claims the right, such candidate shall give notice of his intention in writing, to the person whose election he intends to contest, or leave a notice thereof at his usual place of residence, within thirty days after the day of election, expressing the points on which the same will be contested, the name of one of the justices of the peace who will attend at the taking of the depositions, the place

where, and the time when the said depositions will be taken; which time so fixed upon for the taking of the depositions, shall not exceed sixty days from the day of election.

SEC. 43. The party whose election is contested, may select another justice of the peace to attend at the trial. Should the party whose election is contested, refuse or neglect to select a justice as aforesaid, the justice chosen by the person contesting the election as aforesaid, shall make such selection for him. The two justices so selected or chosen, shall make choice of a third justice; and if they can not agree upon a third justice to act with them, they shall make such selection by lot; and the three justices thus selected, or either of them, shall have power, and they are hereby authorized and required, to issue subpoenas and such other process as may be necessary to secure the attendance at such trial, of all persons whose testimony may be required by either party, in the same manner as is provided in other cases of proceedings before justices of the peace.

SEC. 44. The said justices, or any one of them, shall, in all such cases, have power to issue subpoenas for witnesses to any county in this State, directed to the sheriff of such county, who shall make service and return as in other cases. And any witness, duly subpoenaed, refusing or neglecting to appear and testify, shall, in addition to the penalties otherwise imposed by law, forfeit and pay a fine of fifty dollars, to be recovered by action of debt, in any court having cognizance thereof, one-half to the county, and one-half to the person suing for the same.

SEC. 45. The said justices, or any one of them, may issue attachments for witnesses so neglecting or refusing to attend, who may be brought before them; and at any time before the day for the decision of the question between the contesting parties, the said justices shall, at the request of either, after giving notice to the other party of five days, if resident in their county, or ten days, if residing out of their county, proceed to take the testimony of such witnesses, to be used in the case.

SEC. 46. If any justice of the peace selected as aforesaid, to attend at the taking of the depositions, shall, without reasonable excuse, fail or refuse to attend at the time and place appointed, after having undertaken to attend, he shall forfeit and pay a fine of fifty dollars, to be recovered by action of debt, in any court having cognizance thereof, one-half to the county, and the other half to the person who will sue for the same.

SEC. 47. The said justices shall hear and examine all the evidence offered on either side. If the contest be respecting any county office, they shall decide which of the said candidates shall have been duly elected, and certify the same to the clerk of the county commissioners' court of the proper county, who shall thereupon make out and deliver to the successful party a certificate of his election. If such contest be respecting a seat in the Senate or House of Representatives of this State, the said justices shall hear and reduce to writing, all the testimony taken in the case, and certify and transmit the same under seal, together with all other papers and documents pertaining to the case, to the speaker of the Senate or House of Representatives as the case may be.

SEC. 48. No testimony shall be heard by the said justices on the part of the person contesting the election, which does not relate to the points specified in the notice. Such justices shall have power to appoint a clerk, and may adjourn from day to day, until their duties shall be completed. They shall have the same power to preserve order, and to punish disorders and contempts, as justices of the peace may exercise, when holding court.

SEC. 49. In all contests for county offices, in which the justices hearing the case, are authorized to decide, they shall enter judgment on the docket of the justice last chosen, for all the costs of such contest, against the unsuccessful party, upon which execution may issue as in other cases. Either party may appeal from the decision of such justices to the circuit court as in other cases of appeal from the judgment of a justice of the peace, the decision of which court shall be final.

SEC. 50. In all contests other than for county offices, the proceedings for taking testimony hereinbefore provided, may be had in each county in which it is necessary to take testimony, and the like returns shall in each case be made. In those cases in which the justices examining, do not decide the contest, they shall not be compelled to certify or transmit the testimony and documents pertaining to the case, until the reasonable costs of the examination and of certifying the same, are tendered or paid; and the party who is finally unsuccessful shall be liable for such costs, to the person who shall have paid the same. But if neither party shall require or cause such testimony and documents to be transmitted, then judgment may be entered and execution had, as before provided, against the party at whose instance such examination was instituted.

SEC. 51. In all elections by the General Assembly, or by either house thereof, (elections of justices of the supreme court, and judges of inferior courts excepted,) the members shall vote *viva voce*, and their votes shall be entered upon the journals. Elections by joint vote of the two houses shall be made in the hall of the house of representatives, at such time as shall have been previously appointed by joint resolution of the two houses; and at all such joint meetings, the speaker of the house of representatives shall preside. Elections of justices of the supreme court and judges of inferior courts shall be made by joint ballot of both houses, in the hall of the house of representatives, the speaker of which shall appoint a member of each house to act as tellers. No person shall be declared duly elected by the General Assembly, or either branch thereof, until he shall have received a majority of all the votes given, blank votes included.

SEC. 52. If any person shall, at any time hereafter, bet or wager any money, property or other valuable thing, upon the result of any election which may be held under the constitution or laws of this State, or shall bet or wager money, property or other valuable thing, upon the number of votes which may be given to any one or more persons, at any election held as aforesaid, or upon who will receive the greatest number of votes at any such election; or if any person shall agree to pay to any other person, any money, property or other valuable thing, in the event that any election as aforesaid shall result in one way, or in the event that any one or more persons shall or shall not be elected, or shall receive a greater number of votes than others, such person shall be liable to indictment, and, upon conviction thereof, shall be fined, in any sum not exceeding one thousand dollars.

SEC. 53. It shall not be necessary to the commission of the offence specified in the foregoing section, that the money, property or valuable thing, bet or wagered, shall be exhibited or staked at the time of making such bet or wager, or at any other time.

APPROVED: March 3, 1845.

CHAPTER XXXVIII.

ESCHEATS.

SECTION

1. Real estate, when may vest in the State.
2. When lands escheat to State, duty of circuit attorney and circuit court.
3. Claimants may appear and plead; other proceedings defined.
4. Disposition of lands, when judgment rendered in favor of State.

SECTION

5. Appeal, right of parties to.
6. Auditor to keep accounts of moneys and lands; how and in what time may recover money; how lands may be recovered by claimants; within what time application must be made; rights of infants, married women, &c., reserved.

SECTION 1. If any person shall die seized of any real or personal estate, without any devise thereof, and leaving no heirs or representatives capable of inheriting the same, or the devisees thereof be incapable of holding the same; and in all cases where there is no owner of real estate capable of holding the same, such estate shall escheat to, and vest in the State.

SEC. 2. When the attorney general or any circuit attorney shall be informed, or have reason to believe, that any real estate within his district hath escheated to the State, by reason that any person hath died seized thereof, without devising the same, and leaving no heir capable of inheriting the same; or by reason of the incapacity of the devisee to hold the same, and such estate shall not have been sold according to law, within five years after the death of the person last seized, for the payment of the debts of the deceased; or when he shall be informed, or has cause to believe, that any such estate within his district hath otherwise escheated to the State, it shall be his duty to file an information in behalf of the State, in the circuit court of the county in which such estate is situate, setting forth a description of the estate, the name of the person last lawfully seized, the names of the *terre tenants* and persons claiming such estate, if known, and the facts and circumstances in consequence of which such estate is claimed to have escheated, and alleging that by reason thereof, the State of Illinois hath right by law to such estate: Whereupon such court shall award and issue a *scire facias* against such person or persons, bodies politic or corporate, as shall be alleged in such information, to hold, possess or claim such estate, requiring them to appear and show cause why such estate should not be vested in the State, at the next term of such court; which *scire facias* shall be served at least fifteen days before the return day thereof; and the court shall moreover, make an order, setting forth briefly the contents of such information, and requiring all persons interested in the estate, to appear and show cause, if any they have, at the next term of the said court, why the same should not be vested in the State; which order shall be published for six weeks successively in some newspaper printed in this State, and in or nearest to the county in which such proceeding is had; the last insertion to be at least two weeks before the commencement of the term at which the parties are required to appear.

SEC. 3. All persons, bodies politic and corporate, named in such information as *terre tenants* or claimants to the estate, may appear and plead to such proceedings, and may traverse or deny the facts stated in the information, the title of the State

to the lands and tenements therein mentioned, at any time, on or before the third day of the return of such *scire facias*; and any other person claiming an interest in such estate, may appear and be made a defendant, and plead as aforesaid, by motion for that purpose in open court, within the time allowed for pleading as aforesaid; and if no person shall appear and plead, or appearing, shall refuse to plead within the time, then judgment shall be rendered that the State be seized of the lands and tenements in such information claimed; but if any person shall appear, and deny the title set up by the State, or traverse any material facts in the information, an issue or issues shall be made up and tried, as other issues of fact, and a survey may be ordered and entered as in other actions, where the title or boundary of lands is drawn in question; and if, after the issues are tried, it shall appear from the facts found or admitted, that the State hath good title to the lands and tenements in the information mentioned, or any part thereof, judgment shall be rendered, that the State be seized thereof, and recover costs of suit against the defendant.

SEC. 4. When any judgment shall be rendered, that the State be seized of any land, tenements or hereditaments, such judgment shall contain a certain description of such estate, and shall be effectual for vesting the title in the State; and a writ shall be issued, directed to the sheriff of the same county, commanding him to seize and take the lands, tenements and hereditaments so vested in the State, into his hands; and upon the return of such writ of seizure, the attorney general or circuit attorney prosecuting such information, shall cause the record and process to be exemplified under the seal of the court, and deposit the same in the office of the auditor of public accounts, and shall also cause a transcript of the judgment to be recorded in the office of the recorder of the county in which the land lies; and such judgment shall preclude all parties and privies thereto, their heirs and assigns, so long as such judgment shall remain in force.

SEC. 5. Any party who shall have appeared to any proceeding as aforesaid, and the attorney general or circuit attorney, on behalf of the State, shall respectively have the same right to prosecute an appeal or writ of error upon any judgment as aforesaid, as parties in other cases.

SEC. 6. The auditor of public accounts shall keep just and true accounts of all moneys paid into the treasury, and of all lands vested in the State as aforesaid; and if any person shall appear within ten years after the death of the intestate, and claim any money paid into the treasury as aforesaid, as heir or legal representative, such person may file a petition to the circuit court, as a court of chancery for the county in which the seat of government may be, stating the nature of his claim, and praying such money may be paid to him; a copy of which petition shall be served upon the attorney general, who shall put in an answer to the same, and the court shall thereupon examine the said claim, and the allegations and proofs, and if it shall find that such person is entitled to any money paid into the treasury, such court shall, by an order, direct the auditor of public accounts to issue his warrant on the treasurer for the payment of the same, but without interest or costs; a copy of which order, under the seal of the court, shall be a sufficient voucher for the issuing such warrant. And if any person shall appear and claim any lands vested in the State as aforesaid, within five years after the judgment was rendered, it shall be lawful for such person (other than such as were served with a *scire facias* or appeared to the proceeding, their heirs or assigns,) to file his petition in the circuit court, (as a court of chancery,) of the county in which the lands claimed, lie, setting forth the nature of his claim, and praying that the said lands may be relinquished to him; a

copy of which petition shall be served on the attorney general, or circuit attorney of the district, who shall put in an answer, and the court thereupon shall examine said claim, and the allegations and proofs; and if it shall appear that such person is entitled to the lands claimed, the court shall decree accordingly, which shall be effectual for divesting the interest of the State in or to the lands; but no costs shall be adjudged against the State; and all persons who shall fail to appear and file their petitions within the times limited aforesaid, shall be forever barred; saving, however, to infants, married women and persons of unsound mind, or persons beyond the limits of the United States, the right to appear and file their petitions as aforesaid, at any time within five years after their respective disabilities are removed: *Provided, however,* That the General Assembly may cause such lands to be sold at any time after seizure, in such manner as may be provided by law. In which case the claimants shall be entitled to the proceeds, in lieu of the land, upon obtaining a decree or order as aforesaid.

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CHAPTER XXXIX.

ESTRAYS.

SECTION

1. Estrays, persons taking up, how to proceed.
2. Appraisements, how made.
3. Taker up, and justice of the peace, their duties.
4. Duty of county commissioners' clerk.
5. Two or more estrays may be included in one entry.
6. Neat cattle, sheep, hog or goat not to be taken up from first April to first November; fees for taking up.
7. Proof of taking up, how made.
8. When estray proved and taken away before appraisal, charges to be paid.
9. Estrays not to be used before advertising, except in certain cases.
10. Advertisement of estray horse, mare or colt, mule or ass, to be made in paper of public printer.
11. When no owner appears, property vested in taker up.
12. Penalty for trading, selling, or taking away estray before one year; and how disposed of when not claimed within one year.

SECTION

13. Estray horse, mare, colt, mule or ass, running at large out of the settlements, may be taken up, and how disposed of.
14. When owner does not claim within one year, property may be sold; nevertheless, owner may appear within two years and claim balance due from such sale.
15. Justice of the peace, penalty for failing to pay over money for estray sold.
16. If estray dies before owner claims, taker up not liable; and penalty for illegal taking up, or failing to comply with requisitions of this chapter.
17. Boat or water craft, taker up how to proceed, and duty of justices of the peace.
18. How taker up to proceed when value does not exceed twenty dollars; but when value exceeds twenty dollars, duty of clerk.
19. Fees, to whom and how paid, and amount of.
20. Penalty, when not otherwise herein specified; its amount; in whose name and before whom suits may be brought.

SECTION 1. Every person who shall take up any estray horse, mare, colt, mule or ass, after having given not less than ten nor more than fifteen days' notice, by posting up notices in three of the most public places in the justice's district in which he resides, shall take the same before some justice of the peace of the county where such estray shall be taken up, and make oath before such justice, that the same was taken up at his or her plantation or place of residence in said county, and that the marks or brands have not been altered since the taking up.

SEC. 2. The said justice shall then issue his warrant to three disinterested housekeepers in the neighborhood, unless they can otherwise be had, causing them to come before him to appraise said estray, after they or any two of them being sworn to appraise such estray, without partiality, favor or affection; which appraisement, together with the marks, brands, stature, color and age of such horse, mare or colt, mule or ass, shall be entered in a book to be kept by such justice, and certified under his hand, and transmitted to the clerk of the county commissioners' court of such county, within fifteen days after the same is taken up.

SEC. 3. Any person who shall take up any head of neat cattle, sheep, hog or goat, after having given the notice required in section one of this chapter, shall go with some householder before a justice of the peace of the county, and make oath before him as is required in taking up an estray horse, mare or colt, mule or ass, and then such justice shall take from such housekeeper, upon oath, a particular description of the marks, brands, color and age of every such neat cattle, sheep, hog or goat, and said justice shall cause the said estrays to be appraised, in like manner as is required to be done in case of a horse, mare or colt, mule or ass; which description and valuation shall be entered by such justice in a book to be kept by him as aforesaid, and by such justice transmitted to the clerk of the county commissioners' court of the county, to be by him kept as before directed: *Provided*, That in all cases where the value of such neat cattle, sheep, goat or hog, does not exceed five dollars, said justice shall not be required to make a return to the clerk as aforesaid; but shall enter in his estray book the description and appraisement value of such sheep, hog or goat, and advertise the same in three of the most public places in his neighborhood.

SEC. 4. Every such clerk shall cause a copy of such description and valuation of every neat cattle, sheep, hog and goat returned to him, to be publicly affixed at the court house door of his county, within five days after the same shall be transmitted to him as aforesaid, for which he shall receive the same fee as for entering the same in a book.

SEC. 5. If two or more estrays of the same species, are taken up by the same person at the same time, they shall be included in one entry and one advertisement, and in such case, such justice and clerk shall receive no more pay than for one of such species.

SEC. 6. No person shall be allowed hereafter to take up and post any head of neat cattle, sheep, hog or goat, between the month of April and the first day of November, unless the same may be found in the lawful fence or inclosure of the taker up, having broken in the same; and for a reward of taking up, there shall be paid by the owner, one dollar for every horse, mare or colt, mule or ass; and for every head of neat cattle, fifty cents; and for every hog, sheep or goat, twenty-five cents, together with all reasonable charges.

SEC. 7. Proof of the giving of notice as required in the first and third sections of this chapter, may be made by the oath of the person advertising, or a credible witness, previous to the appraisement.

SEC. 8. If the owner of any such animals shall prove and take them away, before the appraisement thereof, he shall pay to the person who has care of the same, all reasonable charges for taking up and keeping the same.

SEC. 9. It shall not be lawful for persons taking up estrays, to use the same previous to advertising them, unless it be to milk cows, and the like, for the benefit and preservation of such animals.

SEC. 10. It shall be the duty of the clerk of the county commissioners' court, when the description and valuation of any estray horse, mare or colt, mule or ass, shall be transmitted to him by the justice as aforesaid, and in ten days thereafter make out a copy thereof, and transmit the same to the public printer of the State, and indorse thereon, "Estray papers," together with the sum of one dollar, to pay the said printer; which sum the taker up is required to deposit with the clerk prior to the expiration of said ten days. It shall be the duty of the public printer to publish said advertisement, and transmit one copy of each number of his paper to each of the clerks of the county commissioners' court of the several counties of this State, free of charge, which shall be regularly filed by said clerks in their respective offices for the examination of those who may desire it.

SEC. 11. And if no owner appear and prove his property within one year after such publication, the property shall be vested in the taker up; nevertheless, the former owner may, at any time thereafter, by proving his property, recover the valuation money, upon payment of costs and all reasonable charges.

SEC. 12. And if any person shall trade, sell, or take away any such estray or estrays out of the State, for any purpose whatever, before the expiration of said one year, he or she so offending, shall be liable to indictment in the circuit court of the proper county, and on conviction thereof, shall be fined in a sum double the value of the property, one-half to the owner thereof, and the other half to the county treasury; and when the owner of any estray head of neat cattle, sheep, hog or goat, does not prove his property within twelve months after the same has been published at the door of the court house as aforesaid, and when the valuation does not exceed five dollars, the property shall be vested in the taker up; but when the valuation shall exceed five dollars, and no owner appear within the time aforesaid, the property shall also be vested in the taker up; nevertheless, the former owner may, at any time, by proving his property, recover the valuation thereof, upon payment of all reasonable costs and charges; and if the taker up and the owner can not agree upon the charges, they shall call upon three disinterested householders, whose decision shall be binding on both parties; and it shall not be lawful for any person to take up any estray, (except such as shall be hereinafter excepted,) unless he shall be a freeholder or a housekeeper.

SEC. 13. Any person finding a stray horse, mare, colt, mule or ass, running at large without any of the settlements of this State, may take up the same, and shall immediately take such estray or estrays before the nearest justice of the peace, and make oath that he has not altered the marks or brands of such estray, since taking up; and if such taker up shall be a freeholder or housekeeper within that county, it may and shall be lawful for him, to post such estray or estrays as hereinbefore directed in this chapter, as if the same had been taken up on his plantation or place of residence; and when the taker up shall not be qualified as aforesaid, he shall take the oath before required, and deliver such estray or estrays to the said justice, who shall cause the same to be dealt with as directed by this chapter.

SEC. 14. If no owner appear to prove his property within one year, such estray or estrays shall be sold to the highest bidder, giving public notice of such sale twenty days previous thereto, the purchaser giving a bond and approved security, payable to the county commissioners' court of the county where such estray shall be taken up; and after paying the taker up all reasonable charges, the balance shall be put into the county treasury by the said justice, who shall take a receipt for the same from the county treasurer; nevertheless, the former owner, at

any time within two years after taking up, by proving his property before the clerk of the county commissioners' court of said county, or before the justice of the peace before whom the property was taken up, and obtaining a certificate thereof, from the clerk of said court or justice of the peace, to the treasurer, shall receive the balance aforesaid.

SEC. 15. And when any justice of the peace shall fail to pay any money for any stray or estrays to be sold agreeably to this chapter, into the county treasury, within three months after selling such stray or estrays, such justice shall forfeit and pay the sum of twenty dollars, with costs, to be recovered by action of debt, before any justice of the peace of the county, or other court having jurisdiction thereof, the one-half for the use of the county, and the other half for the use of any person suing for the same; and moreover, be liable to pay the price of such stray or estrays, with interest thereon.

SEC. 16. If any stray or estrays, taken up as aforesaid, shall die or get away before the owner shall claim his or her right, the taker up shall not be liable for the same; and if any person shall take up any stray or estrays, at any other place within the inhabited parts of this State than his or her plantation or place of residence, or without being qualified as required by this chapter, he shall forfeit and pay the sum of ten dollars, with costs, recoverable before any justice of the peace of the county where the offence shall have been committed, and not having property sufficient to pay such fine, he shall be liable to be confined one month in the jail of the county where he may be found, being found guilty of such offence according to law; and any person taking up any stray or estrays out of the limits of the settlements of this State, and failing to comply with the requisitions of this chapter, shall be liable to the same penalties; and if any person, taking up any stray or estrays of any species, fail to comply with the requisitions of this chapter, he shall, for every such offence, forfeit and pay to the informer, the sum of ten dollars with costs, recoverable before any justice of the county where such offence shall be committed; one-half to the use of the county, and the other half to the use of the person suing for the same.

SEC. 17. If any person or persons shall hereafter stop or take up any keel or flat boat, ferry flat, batteau, pirogue, canoe, or other vessel or water craft, or raft of timber, or plank found adrift on any water course within the limits or upon the borders of this State, and the same shall be of the value of five dollars or upwards, it shall be the duty of such person or persons, within five days thereafter, (provided the same shall not before that time be proven and restored to the owner,) to go before some justice of the peace of the proper county, and make affidavit in writing, setting forth the exact description of such vessel or craft, when and where the same was found, whether any, and if so, what cargo was found on board, and that the same has not been altered or defaced, either in whole or in part, since the taking up, either by him, her or them, or by any other person or persons, to his, her or their knowledge; and the said justice shall thereupon issue his warrant, directed to some constable of his county, commanding him forthwith, to summon three respectable householders of the neighborhood, if they can not otherwise be had, whose duty it shall be, after being sworn by said justice, to proceed without delay to examine and appraise such boat or vessel, and cargo, if any, and make report thereof, under their hands and seals, to the justice issuing such warrant, who shall enter such appraisement, together with the affidavit of the taker up, at large in his stray book; and it shall be the further duty of said justice, within ten days after the said

proceedings shall have been entered in his estray book as aforesaid, to transmit a certified copy thereof to the clerk of the county commissioners' court of his county, to be by him recorded in his estray book, and filed in his office.

SEC. 18. In all cases where the appraisement of such boat or water craft, including her cargo, shall not exceed the sum of twenty dollars, the taker up shall advertise the same on the door of the court house, and in three of the most public places in the county, within ten days after the justice's said certificate shall have been entered on the records of the county commissioners' court; and if no person shall appear to prove and claim such boat or water craft, within six months from the time of taking up as aforesaid, the property in the same shall vest in the taker up; but if the value thereof shall exceed the sum of twenty dollars, it shall be the duty of the clerk of the county commissioners' court, within twenty days from the time of the reception of the justice's said certificate at his office, to cause an advertisement to be set up on the door of the court house, and also a notice thereof to be sent to the public printer as aforesaid, who shall publish the same as aforesaid; and if the said vessel be not claimed and proven within six months from said advertisement, the same shall be vested in the taker up; nevertheless, the former owner may, at any time thereafter, recover the valuation money by proving his property and allowing to the taker up a reasonable compensation for his trouble, and costs and charges.

SEC. 19. In all cases where services shall be performed by any officers or other person or persons under this chapter, the following fees or compensation shall be allowed, to-wit: To the justice of the peace for administering oath to the taker up or finder, making an entry thereof, with the report of the appraisers, and making and transmitting a certificate thereof to the clerk of the county commissioners' court, fifty cents; to the clerk or justice for taking proof of the ownership of, and granting a certificate of the same, twenty-five cents; for registering each certificate transmitted to him by any justice as aforesaid, twelve and a half cents; for advertisements, including the newspaper publications, fifty cents in addition to the cost of such publication; to the constable for each warrant so served on appraisers, twenty-five cents; and to each appraiser the sum of twenty-five cents; which said fees shall be paid by the taker up to the person entitled thereto, whenever said services shall be rendered. All which costs and charges shall be reimbursed to the taker up or finder, in all cases where restitution of the property shall be made to the owner, in addition to the reward to which such person may be entitled for taking up as aforesaid.

SEC. 20. If any person shall act contrary to the duties enjoined by this chapter, for which no penalty is hereinbefore pointed out, the person so offending shall, on conviction thereof, forfeit and pay for every such offence, not less than five nor more than one hundred dollars, to be sued for in the name of the proper county, before any justice of the peace or other court having cognizance thereof.

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CHAPTER XL.

EVIDENCE AND DEPOSITIONS.

SECTION

1. Statutes of the United States, State and Territories, shall be evidence, when printed by proper authority.
2. Authorized reports of decisions may be read in evidence.
3. Copies of proceedings and judgments before justices of the peace, when duly certified, may be read in evidence.
4. Official certificate of register or receiver of land office of United States, deemed evidence in certain cases.
5. Land patent, its effect as evidence of title in patentee.
6. Laws of other States and Territories, exemplifications of, by secretaries of State, admissible as evidence.
7. In suits against partners, names of individuals not necessary to be proved in certain cases.
8. Proof of joint liability of defendants, or their christian or surnames, when not required.
9. Certified copies of proceedings of corporations, *prima facie* evidence.
10. Non-resident witnesses, depositions of, how to be obtained.

SECTION

11. Resident witnesses, depositions of, how to be obtained.
12. Depositions, how taken.
13. Deemed good and competent evidence.
14. Witnesses, by whom and how may be called and examined.
15. Compensation of witnesses, and by whom paid.
16. Party interested in event of suit, not permitted to dictate, write, or draw up deposition; effect of so doing.
17. Seal not to be broken, unless by permission of court; penalty therefor.
18. When and by whom depositions may be read.
19. *Dedimus potestatem*, when may be sued out, and proceedings thereon.
20. Previous notice to be given of taking depositions, before suing out *dedimus*, and further proceedings defined.
21. Before whom depositions may be taken, and who may attend; further proceedings relative thereto.
22. After death of deponent, deposition may be used as evidence.
23. Negro, mulatto or Indian shall not be witness, and who deemed mulatto.

SECTION 1. The printed statute books of the United States, and of this State, and of the several States; of the territories and late territories of the United States, printed under the authority of said States and territories, shall be evidence in all courts and places in this State, of the acts therein contained.

SEC. 2. The books of reports of decisions of the supreme court and other courts of the United States, of this State, and of the several States and the territories thereof, published by authority of such courts, may be read as evidence of the decisions of such courts.

SEC. 3. Copies of the proceedings and judgments before justices of the peace, certified by the justice or justices under his or their hands and seals, before whom such proceeding or judgment is had, shall be received as evidence of such proceeding or judgment. Where such certified copy is to be used as evidence in any county other than that in which the justice or justices so certifying shall reside, the same shall not be received as evidence, unless a certificate from the clerk of the county commissioners' court, (with the seal of the court,) shall be annexed thereto, certifying that on the day on which such proceeding was had, or judgment rendered, such justice so granting the same, was a justice of the peace, duly commissioned and sworn.

SEC. 4. The official certificate of any register or receiver of any land office of the United States, to any fact or matter on record in his office, shall be received in evidence in any court in this State, and shall be competent to prove the fact so certified. The certificate of any such register, of the entry or purchase of any tract of land within his district, shall be deemed and taken to be evidence of title

in the party who made such entry or purchase, or his heirs or assigns, and shall enable such party, his heirs or assigns, to recover the possession of the land described in such certificate, in any action of ejectment or forcible entry and detainer, unless a better legal and paramount title be exhibited for the same.

SEC. 5. A patent for land, shall be deemed and considered a better legal and paramount title in the patentee, his heirs or assigns, than the official certificate of any register of a land office of the United States, of the entry or purchase of the same land.

SEC. 6. An exemplification by the secretary of this State, of the laws of the other States and territories, which have been, or shall hereafter be transmitted by order of the executive or legislatures of such other States or territories, to the Governor of this State, and by him deposited in the office of said secretary, shall be admissible as evidence in any court of this State.

SEC. 7. In trials of actions upon contracts, express or implied, where the action is brought by partners, or by joint payees or obligees, it shall not be necessary for the plaintiff, in order to maintain any such action, to prove the co-partnership of the individuals named in such action, or to prove the christian or surnames of such partners, or joint payees or obligees; but the names of such co-partners, joint payees or obligees shall be presumed to be truly set forth in the declaration, petition or bill: *Provided*, That nothing herein contained, shall prevent the defendant in any such action, from pleading in abatement as heretofore, or of proving on the trial, either that more persons ought to have been plaintiffs, or that more persons have been made plaintiffs than have a legal right to sue, or that the christian or surname is other and different from the one stated in the declaration, petition or bill; in which event the defendant's rights shall be as at common law.

SEC. 8. In actions upon contracts express or implied, against two or more defendants, alleged to have been made or executed by such defendants, as partners or joint obligors or payors, proof of the joint liability or partnership of the defendants, or their christian or surnames, shall not, in the first instance, be required to entitle the plaintiff to judgment, unless such proof shall be rendered necessary by pleading in abatement, or the filing of pleas denying the execution of such writing, verified by affidavit, as required by law.

SEC. 9. Copies of all papers, books or proceedings, or parts thereof, appertaining to transactions in their corporate capacity, of any town or city heretofore incorporated, or now incorporated, or that may hereafter be incorporated, under a general or special law of this State, certified to be true copies by the clerk or the keeper of the same under the seal of said town or city, or under the private seal of said clerk or keeper if there be no public seal; the said clerk or keeper also certifying that he is entrusted with the safe keeping of the originals of which he gives certified copies, shall be received as *prima facie* evidence of the facts so certified, in all the courts of this State, in any suit or proceeding pending before them.

SEC. 10. When the testimony of any non-resident witness or witnesses shall be necessary in any civil cause depending in any court of law or equity in this State, it shall be lawful for the party wishing to use the same, on giving to the adverse party or his attorney, ten days previous notice, together with a copy of the interrogatories intended to be put to such witness or witnesses, to sue out from the proper clerk's office a *dedimus potestatem* or commission, under the seal of the court, directed to any number of persons, not exceeding three, as commissioners, or to any judge or

justice of the peace of the county or city in which such witnesses may reside, authorizing and requiring him or them to cause such witness or witnesses to come before him or them, at such time and place as he, or they may designate and appoint, and faithfully to take his, her or their deposition or depositions upon all such interrogatories as may be inclosed with, or attached to said commission, both on the part of the plaintiff and defendant, and none others; and to certify the same when thus taken, together with the said commission and interrogatories, into the court in which such cause shall be depending, with the least possible delay.

SEC. 11. When the testimony of any resident witness or witnesses shall be necessary in any suit in chancery in this State, it shall be lawful for the party wishing to use the same, to cause the deposition or depositions of such witness or witnesses, to be taken before any justice of the peace, or clerk of the circuit or county commissioners' court of the county wherein such witness or witnesses shall reside, without being required to sue out a commission, or to file interrogatories for such purpose, on giving to the adverse party or his attorney, reasonable notice of the time and place of taking the same. And it shall also be lawful, upon satisfactory affidavit being filed, to take the depositions of witnesses residing in this State, to be read in suits at law, in like manner as is above provided, in all cases where such witness or witnesses shall reside in a different county from that in which the court shall be held, is or are about to depart from the State; is or are confined in jail on legal process; or is or are unable to attend such court on account of advanced age, sickness, or other bodily infirmity: *Provided*, That such reasonable notice shall be intended to mean at least ten days in all cases, and one day in addition thereto, (Sundays inclusive,) for every thirty miles travel from the place of holding the court, to the place where such deposition or depositions shall be taken.

SEC. 12. Previous to the examination of any witness whose deposition is about to be taken as aforesaid, he or she shall be sworn (or affirmed) by the person or persons authorized to take the same, to testify the truth in relation to the matter in controversy, so far as he or she may be interrogated; whereupon, the said commissioner or commissioners, judge, justice of the peace or clerk, (as the case may be,) shall proceed to examine such witness upon all such interrogatories as may be inclosed with, or attached to any such commission as aforesaid, and which are directed to be put to such witness, or where no such commissioner shall be necessary, upon all such interrogatories as may be directed to be put by either party litigant; and shall cause such interrogatories, together with the answers of the witness thereto, to be reduced to writing in the order in which they shall be proposed and answered, and signed by such witness. After which, it shall be the duty of the person or persons taking such deposition, to annex at the foot thereof, a certificate subscribed by himself or themselves, stating that it was sworn to and signed by the deponent, and the time and place, when and where the same was taken. And every such deposition, when thus taken and subscribed, and all exhibits produced to the said commissioner or commissioners, judge, justice of the peace or clerk as aforesaid, or which shall be proved or referred to by any witness, together with the commission and interrogatories, if any, shall be inclosed, sealed up and directed to the clerk of the court in which the action shall be pending, with the names of the parties litigant indorsed thereon: *Provided*, That when any deposition shall be taken as aforesaid, by any judge or justice of the peace out of this State, such return shall be accompanied by a certificate of his official character under the great seal of the State, or under the

seal of the proper court of record of the county or city wherein such deposition shall be taken.

SEC. 13. Every examination and deposition which shall be taken and returned according to the provisions of this chapter, may be read as good and competent evidence in the cause in which it shall be taken, as if such witness had been present and examined by parol in open court on the hearing or trial thereof.

SEC. 14. Each and every commissioner or commissioners, judge, justice of the peace, or clerk of the circuit or county commissioners' court, who may at any time be required to take depositions in any cause pending in any of the courts of law or equity in this State, or by virtue of any commission issued out of any court of record in any other State or territory, shall have power and authority to issue subpoenas, if necessary, to compel the attendance of all such witnesses as shall be named in the commission, or by the parties litigant, where no commission is necessary, in the same manner and under the same penalties as is prescribed in other cases, where witnesses are directed to be subpoenaed.

SEC. 15. Every witness attending before any commissioner, judge, justice of the peace or clerk as aforesaid, to be examined as aforesaid, shall be entitled to a compensation for his time and attendance and traveling expenses at the same rate for the time being, as is, or shall be allowed by law to witnesses attending courts of record in this State; and the party requiring such examination shall pay the expenses thereof, but may, if successful in the suit, be allowed for the same in the taxation of costs.

SEC. 16. The party, his attorney, or any person who shall in anywise be interested in the event of the suit, shall not be permitted to dictate, write or draw up any deposition or depositions which may at any time be taken under this chapter; and every deposition so dictated, written or drawn up, or that shall be returned to the court unsealed, or the seal of which shall be broken, shall be rejected by the court as informal and insufficient: *Provided*, Such seal shall have been broken previous to its reception by the clerk, to whom it shall be directed.

SEC. 17. It shall not be lawful for any party litigant or the clerk of the court into which any deposition may be returned as aforesaid, to break the seal of the same, either in term time, or in vacation, unless by permission of the court. And if any such person or clerk shall presume to open any such deposition when taken and returned as aforesaid, without such permission as aforesaid, he shall be considered guilty of a contempt of court, and may be punished accordingly: *Provided*, That it shall not be considered an offence for the clerk to break open any such deposition as aforesaid, where it is doubtful from the indorsements made thereon, whether the same be a deposition or not; but in such case, it shall not be proper for such clerk to permit any person to examine any deposition, which may be thus opened by mistake, until permission shall have been first given by the court as aforesaid.

SEC. 18. All depositions taken in pursuance of this chapter, when returned into court, may be read by either party, on the trial of the causes to which they relate.

SEC. 19. In all cases hereafter, where any person or persons shall desire to perpetuate the remembrance of any fact, matter or thing, which may relate to the boundaries or improvements of land, name, or former name of water courses; the name or former name of any portion or district of country; regarding the ancient customs, laws or usages of the inhabitants of this country, as far as the same may relate to the future settlement of the land claims; or touching the marriage or pedigree of any person or persons, or in relation to the title to slaves or servants;

or any other matter or thing necessary to the security of any estate, real or personal, or mixed, or any private right whatever, it shall be lawful for such person or persons, upon filing a petition supported by affidavit, in the circuit court of the proper county, setting forth particularly the fact or facts intended to be established, to sue out from such court a *dedimus potestatem* or commission, directed to any two justices of the peace, or to any clerk of the circuit or county commissioners' court of the county wherein such testimony is to be taken, and may, thereupon, proceed to take such deposition or depositions as shall be prayed for in said petition.

SEC. 20. It shall be the duty of the person or persons suing out such *dedimus* as aforesaid, before proceeding to take such deposition as aforesaid, to give at least four weeks previous notice of the time and place when and where the same is to be taken, together with a copy of the petition annexed thereto, to each and every person who may be known to be interested in the subject matter of such deposition, or to his, her or their attorney, or in case the person be a *feme covert*, to her husband; or if a minor or minors, to his, her or their guardian or guardians; or if such guardian or guardians should be interested, to such guardian or guardians as shall be appointed by the court to defend the interests of such infant or infants; or in lieu of such written notice as aforesaid, such petitioner or petitioners shall cause a notice in form as aforesaid, with a copy of the petition thereto annexed as aforesaid, addressed to such persons as may be known to be interested as aforesaid, as well as to all others whom it may concern, to be published for four weeks successively in some public newspaper printed in this State, at least eight weeks previous to the day of taking such deposition or depositions.

SEC. 21. The said justices of the peace or clerk as aforesaid, shall attend at the time and place appointed, where each and every person who may think himself or herself interested in the deposition about to be taken, may attend, by themselves or attorneys, and may examine and cross examine such deponent or deponents; and all such questions as may be proposed, together with the answers thereto by the witness, shall be reduced to writing in the English language, or in the language of the witness, (provided he or she shall not understand English,) as near as possible, in the exact words of such deponent, which said questions and answers, when reduced to writing as aforesaid, shall be distinctly read over to the witness; and if found to be correct, shall be signed by him or her, in the presence of the said justice, (or clerk as the case may be,) who shall thereupon administer an oath or affirmation to such witness, as to the truth of the deposition so taken as aforesaid, and shall annex at the foot thereof a certificate subscribed by himself or themselves, stating that it was sworn to and signed by the deponent, and the time and place when and where the same was taken; and all such depositions, when thus taken, shall be carefully sealed up, and transmitted to the clerk of the circuit court of the county from which such *dedimus* shall have been issued, within thirty days from the time of taking the same; who shall thereupon enter the same at large upon the records in his office, and shall certify on the back of such deposition that the same has been duly recorded, and return it to the person or persons for whose benefit it shall have been taken.

SEC. 22. All depositions taken in manner and form as is provided in the two foregoing sections, or a duly certified copy of the record of any such deposition, may, in case of the death of any such deponent, or in case of inability to give testimony, in consequence of his, her or their insanity or imbecility of mind or body,

or where such witness shall be rendered incompetent by judgment of law, or in the event of his, her or their removal, so that their testimony can not be obtained in the ordinary way, on trial, may be used as evidence in any case to which the same may relate: *Provided*, That nothing herein contained, shall be so construed as to prevent any legal exception being made and allowed to the reading of any such deposition in any trial at law or in equity, in which the same may be introduced as evidence.

SEC. 23. A negro, mulatto or Indian shall not be a witness in any court, or in any case, against a white person. A person having one-fourth part negro blood shall be adjudged a mulatto.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Acts No. 14 and 15.]

CHAPTER XLI.

FEES AND SALARIES.

SECTION

1. Salaries of governor, secretary of State, auditor, the treasurer, the chief justice and associate justices, attorney general, circuit attorneys and adjutant general, how paid.
2. Members and officers of the General Assembly, compensation of.
3. Members and officers of the General Assembly, compensation of.
4. Incidental expenses of public offices, what shall constitute.
5. Secretary of State, fees of.
6. Auditor and treasurer, fees of, in certain cases.
7. Clerk of the supreme court, fees of.
8. Clerks of circuit courts, fees of.
9. Probate justice, fees of.
10. Clerks of county commissioners' courts, fees of.
11. Attorney general and circuit attorneys, fees of.
12. Successful party at law, fees of.
13. Sheriff's fees.
14. Sheriff's fees further defined.
15. Coroner's fees.
16. Justice's fees in criminal cases.
17. Justice's fees in civil cases.
18. Constable's fees in criminal cases.
19. Constable's fees in civil cases.
20. Witness's fees.
21. Juror's fees.
22. Arbitrator's fees.
23. Recorder's fees.

SECTION

24. Notaries public, fees of.
25. County surveyor's fees.
26. Guarding jail, fees for, and how established.
27. Illegal fees, penalty for taking, and how recovered.
28. Clerks of supreme and circuit courts to keep record of fees of their respective courts, and how collected.
29. Neglect to make returns of fee bill, penalty for.
30. Clerks of supreme and circuit courts, record of, what shall contain.
31. Persons who have heretofore been, or are now sheriffs, may collect fees in certain cases.
32. Clerks of courts to provide books, &c., allowances therefor, how made.
33. Office rooms for clerks, how provided.
34. Bills of costs, how made out and collected.
35. Duty of officers in issuing executions, penalty for neglect of.
36. Table of fees, clerks, probate justices, and justices of the peace, to set up, and penalty for neglect of.
37. County commissioners' clerks not to charge fees in certain cases, but courts may allow *ex officio* fees.
38. Acknowledgment of deeds, fee for.
39. Clerk of circuit court, duty of, to collect and pay over fees to predecessor.

SECTION 1. The salaries, fees and compensation of the several persons herein-after named, shall be as follows:

To the Governor, per annum, together with house rent, two thousand dollars.

To the secretary of State, exclusive of fees, per annum, and inclusive of clerk hire, eight hundred dollars.

The auditor of public accounts, inclusive of clerk hire, per annum, one thousand six hundred dollars.

State treasurer, inclusive of clerk hire, per annum, eight hundred dollars.

The chief justice and each associate justice of the supreme court, respectively, per annum, one thousand five hundred dollars; excepting justices elected or appointed, subsequent to February twelve, one thousand eight hundred and forty-five, who shall receive, each, one thousand dollars.

The attorney general, per annum, five hundred dollars.

Each circuit attorney, per annum, two hundred and fifty dollars.

The adjutant general, per annum, fifty dollars.

All of which salaries shall be paid to the persons entitled thereto, in quarter yearly instalments, on the warrant of the auditor, out of any moneys in the treasury not otherwise appropriated.

COMPENSATION OF THE MEMBERS OF ASSEMBLY, &c.

SEC. 2. There shall be allowed to the speaker of the senate and house of representatives, respectively, per day, four dollars.

To each member of the senate and house of representatives, per day, three dollars.

To each speaker and member, in addition for every twenty miles' travel in going to, and returning from the place of session, three dollars.

To the secretary of the senate, and principal clerk of the house of representatives, respectively, per day, five dollars.

To the enrolling and engrossing clerks of the senate and house of representatives, respectively, per day, three dollars.

To the door-keeper of the senate and house of representatives, respectively, per day, three dollars.

And the said compensation, when due to the officers and members of the senate as aforesaid, shall be certified by the secretary thereof, with the exception of his own compensation, which shall be certified by the speaker; and the compensation that may be due to the officers and members of the house of representatives, shall be certified by the principal clerk thereof, and that of the clerk, by the speaker; which said certificates, when made out as aforesaid, shall be sufficient evidence to the auditor of each person's claim, respectively, who shall issue his warrant on the treasury for the amount to which such person shall be entitled as aforesaid, to be paid out of any moneys in the treasury not otherwise appropriated.

INCIDENTAL EXPENSES, &c.

SEC. 3. The incidental expenses of the offices of the auditor of public accounts, State treasurer and secretary of State, shall include postage on all public papers sent to or from said offices relative to the business thereof, furniture for the same, the necessary fuel, and all such books, blanks and other stationery as shall be considered necessary for the convenient transaction of business in said departments respectively.

SEC. 4. For the purpose of defraying the incidental expenses aforesaid, it shall be the duty of said officers respectively, from time to time, as said expenses may be incurred, to lay proper vouchers for the same before the Governor, whose duty it shall be, if such accounts shall appear to be reasonable, to allow the same, and to certify the amount thereof to the auditor, who shall thereupon be required to issue his warrant for the same, to the person entitled thereto; to be paid out of any moneys in the treasury not otherwise appropriated.

FEES OF SECRETARY OF STATE.

SEC. 5. There shall be allowed to the secretary of State, in addition to his salary, the following fees, to-wit :

For copies or exemplification of records, for every seventy-two words, fifteen cents.

Affixing State seal, with certificate of authentication, one dollar.

Copy of any law, for every seventy-two words, fifteen cents.

Official certificate without seal, when not required for public use, twenty-five cents.

Provided, That he shall in no case be entitled to any fees whatever, when any services are performed for the State, in discharge of the duties of his office, nor for copying laws, memorials or resolutions.

SEC. 6. The auditor and treasurer, when required to give copies of, or to authenticate records or papers in their respective offices, shall be entitled to the same fees allowed to the secretary of State.

FEES OF THE CLERK OF THE SUPREME COURT :

SEC. 7. For each writ of error and seal, with supersedeas, one dollar.

For each writ of error and seal, without supersedeas, seventy-five cents.

For each bond, when not furnished by the party, fifty cents.

Filing each paper, excepting records and papers on appeals and writs of error, six and a fourth cents.

Filing each record and accompanying papers, on appeals and writs of error, as returned by the inferior courts, twenty cents.

Docketing cause, twelve and a half cents.

Entering each rule or order of court, each entry being considered as one order, twenty-five cents.

Execution and seal, fifty cents.

Entering sheriff's return on any writ or execution, twelve and a half cents.

For each subpoena and seal, fifty cents.

For each scire facias, mandamus and other special process, for every seventy two words, eighteen cents.

Sealing the same, twenty-five cents.

Bringing any particular record into court of a suit, matter or thing not before the court, twenty-five cents.

Copy of a record or other proceedings, for every seventy-two words, fifteen cents.

Entering judgment or decree, for every seventy-two words, eighteen cents.

Entering each continuance from one term to another, twelve and a half cents.

Making complete record, when directed by the party, for every seventy-two words, fifteen cents.

For each official certificate and seal, other than to the process of the court, fifty cents.

Each official certificate, as aforesaid, without seal, twenty-five cents.

Entering attorney on the roll, administering oath, and certifying the same, one dollar.

Making bill of costs for execution, and entering the same in the cost book, thirty-seven and a half cents.

Copy of the same when requested by either party, twenty-five cents.
Administering each oath, twelve and a half cents.

CLERK'S FEES IN THE CIRCUIT COURTS :

SEC. 8. For each *capias*, summons, subpoena and other process not herein specified, and sealing the same, fifty cents.

Provided, That only one subpoena shall be charged for every four witnesses, unless actually made out on request in writing.

For filing each paper in the progress of a suit, and appertaining to the same, excepting papers on appeal from justices of the peace, six and a fourth cents.

Filing the papers on appeals from justices of the peace, taking appeal bond and issuing injunction thereon, fifty cents.

Taking bond for costs, twenty-five cents.

Filing and opening each deposition, twelve and a half cents.

Entering each suit on the docket for trial, twelve and a half cents.

Entering each order or rule of court for continuance, default to plead, or any order actually entered in the progress of a suit, and counting the whole as one entry, twenty-five cents.

For each discontinuance, retraxit, or non suit, twenty-five cents.

For each *dedimus* or commission to take depositions, fifty cents.

Bringing any particular record into court of a suit, matter or thing not properly before the court, twenty-five cents.

Calling and swearing each jury, eighteen and three-fourths cents.

Swearing each witness on the trial of a cause six and a fourth cents.

Swearing any person to an affidavit, twelve and a half cents.

Receiving and entering the verdict of a jury, twelve and a half cents.

Entering each decree or final judgment in a cause, twenty-five cents.

Issuing each writ of *habeas corpus*, *certiorari* or *procedendo*, fifty cents.

Assessing the damages on any bond, note or other instrument for the payment of money, by order of the court, and making a report thereof in writing, twenty-five cents.

Entering special bail on record, in each case, twenty-five cents.

Making a list of jurors when requested, twelve and a half cents.

Swearing constable to take charge of a jury, six and a fourth cents.

Issuing execution, fifty cents.

Docketing the same, twelve and a half cents.

Entering sheriff's return on each execution, twelve and a half cents.

Entering satisfaction of judgment, twenty-five cents.

Entering the report of commissioners or referees, or the award of arbitrators, and all other special entries, for every seventy-two words, twelve and a half cents.

For each official certificate and seal, other than the process of the court, fifty cents.

Taking bond in cases of foreign or domestic attachment, fifty cents.

Taking injunction bond in chancery, fifty cents.

Taking bond in cases of appeal to the supreme court, fifty cents.

Entering appearance of attorney, but once in each suit, twelve and a half cents.

Entering plaintiff's or defendant's appearance, but once in each cause, twelve and a half cents.

For each attachment for a witness, or other person, fifty cents.

For each *venire facias*, or a jury warrant, when actually issued, thirty-seven and a half cents.

Making bill of costs for each execution, and entering the same of record, being one charge, thirty-seven and a half cents.

Copy of the same, when requested by either party, twenty-five cents.

Making complete record of proceedings and judgment, when directed by the court, for every seventy-two words, twelve and a half cents.

Copy of bill, answer, declaration, pleadings, judgment, or other proceeding, for every seventy-two words, twelve and a half cents.

Certifying and sealing the same when requested in writing, fifty cents.

For each commission, *scire facias*, or other special writ or process, and sealing the same, for every seventy-two words, fifteen cents.

Taking depositions when requested, for every seventy-two words, twelve and a half cents.

Taking acknowledgment of a sheriff's deed, twenty-five cents.

Entering the acknowledgment of the sheriff to a deed, when made in open court, twenty-five cents.

Making entry of naturalization of record, for every seventy-two words, fifteen cents.

Taking each recognizance, and entering the same, thirty-seven and a half cents.

Arraigning prisoner at the bar, fifty cents.

Entering the pleadings in a criminal cause, twenty-five cents.

For each copy of an indictment, when requested, for every seventy-two words, fifteen cents.

Entering judgment of conviction, twenty-five cents.

Entering discharge of recognizance, twelve and a half cents.

For a copy of the list of grand or petit jurors, when requested, in a criminal cause, twenty-five cents.

For swearing jurors, witnesses and all other persons, the same fees shall be allowed as in civil cases: and in all criminal cases, where the defendant shall be acquitted or otherwise legally discharged without payment of costs, the clerk shall receive such compensation, as the county commissioners shall order, not exceeding thirty dollars per annum.

For filing declaration of intention to become a citizen, six and a fourth cents.

Swearing the applicant to declaration, six and a fourth cents.

For certifying declaration under seal of court, twenty-five cents.

For filing final application for oath of allegiance, together with accompanying affidavits, twelve and a half cents.

Administering each oath in such case, twelve and a half cents.

Making out final certificate of naturalization, or copy of record of naturalization under seal, fifty cents.

FEES OF PROBATE JUSTICE:

SEC. 9. Taking proof of a last will or testament, fifty cents.

Indorsing certificates of probate thereon, twelve and a half cents.

Recording last will and testament, for every seventy-two words, fifteen cents.

Issuing letters testamentary or of administration, affixing seal thereto, and recording the same, one dollar and fifty cents.

Taking bond of the executor or administrator, seventy-five cents.

Administering oath to each executor or administrator, twelve and a half cents.

For each citation, twenty-five cents.

Taking and filing renunciation of the widow or next of kin, twenty-five cents.

Taking proof of a codicil, proved separately, fifty cents.

Indorsing certificate of probate on codicil, twelve and a half cents.

Recording the same, for every seventy-two words, fifteen cents.

Examining and approving each inventory, sale bill, or account current, filed by executors or administrators, fifty cents.

Entering the settlement of executors or administrators on the order book, seventy-five cents.

Each copy of the settlement of executors or administrators, with certificate and seal, one dollar.

For each decree, limiting the time for exhibiting the claims of creditors, twenty-five cents.

For each order of distribution, fifty cents.

For each order on an executor or administrator to pay out of the estate to creditors, in proportion to their debts, twenty-five cents.

For copies of exemplifications of records, every seventy-two words, fifteen cents.

Official certificate and seal, fifty cents.

Making out order for publication, twenty-five cents.

For allowing an appeal to the circuit court, twenty-five cents.

For issuing each special writ or summons with seal, twenty-five cents.

For administering oath to each witness, six and a fourth cents.

Swearing any person to an affidavit, twelve and a half cents.

Issuing order for writ of certiorari, twenty-five cents.

Examining petition and application for writ of certiorari, twenty-five cents.

Issuing injunction, *ne exeat* or any special writ, fifty cents.

Issuing subpœna, attachment or other process, under seal, twenty-five cents.

Entering each decree, order or judgment, except orders allowing claims for or against an estate, twenty-five cents.

Recording appraisement, sale bill, and all other exhibits and writings required to be recorded, (wills and codicils excepted,) for every hundred words, figures inclusive, ten cents.

Filing each paper belonging to the settlement of any estate, six and a fourth cents.

Issuing letters of guardianship and recording the same, one dollar.

Taking bond of guardian, fifty cents.

Taking any bonds not before specified, fifty cents.

Revoking letters testamentary, administration or guardianship, fifty cents.

Swearing each jury, twenty-five cents.

Writing indenture, to be paid by master, fifty cents.

CLERK'S FEES IN THE COUNTY COMMISSIONERS' COURT :

SEC. 10. For each writ, summons, subpœna or other process, with seal, fifty cents.

Filing each paper, six and a fourth cents.

Entering each order of court, twelve and a half cents.

Administering each oath, six and a fourth cents.

Each certificate and seal to any paper, other than to process, fifty cents.

Official certificate without seal, twenty-five cents.

For each license, and taking bond for a ferry, toll bridge or turnpike road, one dollar.

For each tavern license and taking bond, one dollar.

For each marriage license, one dollar.

For each copy of rates for a ferry, toll bridge, turnpike road or tavern, twenty-five cents.

Filing and recording marriage certificate, twelve and a half cents.

Making each bill of costs and copy, twenty-five cents.

For each writ of *ad quod damnum*, fifty cents.

For copies of all records and proceedings, when made out on request, for every seventy-two words, twelve and a half cents.

Taking depositions when requested, for every seventy-two words, twelve and a half cents.

For taking proof in cases of estrays, and granting certificate of the same, twenty-five cents.

For registering each certificate transmitted to him by a justice of the peace, in cases of estrays, twelve and a half cents.

For advertisements in such cases, including the copy for newspaper publication, fifty cents.

For trying and sealing weights and measures by the county standard, twelve and a half cents.

For every certificate of magistracy under seal, twenty-five cents.

FEES OF THE ATTORNEY GENERAL AND CIRCUIT ATTORNEYS:

SEC. 11. For each conviction in a criminal cause, where the crime is infamous, and the offender subject to corporeal punishment, ten dollars.

For each conviction where the crime is not infamous, and the defendant is subject to fine or imprisonment only, five dollars.

FEES OF THE SUCCESSFUL PARTY AT LAW:

SEC. 12. There shall be allowed to the successful party in each civil action in the circuit and supreme courts, the following docket fees, to-wit:

In each suit in which the title to lands shall come in question, two dollars and fifty cents.

In each suit where the title to lands does not come in question, one dollar and twenty-five cents.

In each chancery suit, two dollars and fifty cents.

No docket fee shall be charged where final judgment or decree shall be for costs only; nor when the case shall be decided without impanneling a jury: nor in suits which do not originate in the circuit court. The above fees shall be taxed in the bill of costs against the unsuccessful party, whether plaintiff or defendant: *Provided*, That not more than one docket fee shall be taxed against the same person in any one cause in the same court.

SHERIFF'S FEES:

- SEC. 13. For serving a writ or summons on each defendant, fifty cents.
 Taking special bail, twenty-five cents.
 For serving a subpoena on each witness, twenty-five cents.
 For summoning jury, (grand jury excepted,) each case, fifty cents.
 Advertising property for sale, twenty-five cents.
 Returning each writ or other process, twelve and a half cents.
 Mileage for each mile of necessary travel, to serve any such writ or process as aforesaid, calculating from the place of holding the court to the place of residence of the defendant or witness; for going only, six and a fourth cents.
 Calling the jury in each cause, twelve and a half cents.
 For levying an execution, fifty cents.
 Returning the same, twelve and a half cents.
 Serving and returning a *scire facias* to revive a judgment, to foreclose a mortgage, or against bail, sixty-two and a half cents.
 For committing each person to jail, thirty-seven and a half cents.
 Discharging each person out of jail, thirty-seven and a half cents.
 Dieting each prisoner, per day, thirty-seven and a half cents.
 For attending before a judge with a prisoner, on a writ of *habeas corpus*, one dollar.
 For each mile of necessary travel in taking such prisoner before the judge as aforesaid, six and a fourth cents.
 Serving a writ of possession, with the aid of the *posse comitatus*, two dollars.
 Serving the same without such aid, one dollar.
 Mileage in either case, for each mile of necessary travel from the place of holding court to the place where such is served, for going only, six and a fourth cents.
 Executing a writ of *ad quod damnum*, attending the inquest, and returning the writ with the verdict of the jury, two dollars.
 For summoning a jury in a case of forcible entry and detainer, and attending the trial, two dollars.
 For attending the circuit and county commissioners' courts, to be allowed and paid out of the county treasury, one dollar.
 For summoning each appraiser to value property, twenty-five cents.
 For swearing each appraiser when summoned, six and a fourth cents.
 For executing and acknowledging a deed, on sale of real estate, one dollar and fifty cents.
 For making certificate of sale previous to the execution of the deed, twenty-five cents.
 For taking a replevin, replevy or forthcoming bond, fifty cents.
 For taking each bail bond or recognizance in a criminal cause, when required by law, fifty cents.
 For executing a *capias* on a defendant in a criminal cause, where the offence is infamous, one dollar.
 For executing a *capias* where the offence is not infamous, fifty cents.
 Mileage for each mile of necessary travel from the place of holding court to the place of making the arrest, six and a fourth cents.
 Serving a declaration in ejectment on each defendant, and making affidavit of service, sixty-two and a half cents.

Mileage for each mile of travel, from the place of holding court to the place of residence of such defendants, six and a fourth cents.

For conveying each prisoner from his own county to the jail of a foreign county, for each mile of travel, going only, ten cents.

For committing each prisoner to jail under the laws of the United States, to be paid by the marshal, or other persons requiring his confinement, thirty-seven and a half cents.

Dieting such prisoner, per day, thirty-seven and a half cents.

For each month's use of the jail during the confinement of such prisoner, to be advanced as aforesaid, and paid into the county treasury, fifty cents.

For discharging such prisoner, thirty-seven and a half cents.

In addition to the above fees, there shall be allowed to the several sheriffs in this State, a commission of five per centum on the amount of all sales of real and personal estate, which shall be made by virtue of any execution issued in pursuance of law, where the money arising from such sales shall not exceed the sum of two hundred dollars; but in all cases where the amount of any such sale shall exceed that sum, a commission of two and a half per centum on the excess only shall be allowed: *Provided*, That in all cases where the execution shall be settled by the parties, replevied, stopped by injunction, or paid, or where the property levied upon shall not be actually sold, the sheriff shall be allowed fifty cents for levying, and six and a fourth cents per mile for going to and returning from the place of execution and sale.

SEC. 14. And no other fees or compensation whatever shall be allowed on any execution, except the necessary expenses for keeping perishable property, to be ascertained and allowed by the court out of which the same shall have issued. In all cases where any of the sheriffs in this State shall be required by law to execute any sentence of punishment, other than imprisonment, for which no fee is allowed by this chapter, it shall be the duty of the county commissioners' court of the proper county, to allow a reasonable compensation for the same, to be paid out of the county treasury. It shall be the duty of each sheriff, entitled to mileage under this chapter, to indorse on each writ, summons, subpoena, or other process, that he may execute, the distance he may travel to execute the same, ascertaining the distance, and the charge properly allowable therefor, in conformity with the foregoing regulations. In all criminal cases where the defendant shall be acquitted, or otherwise legally discharged, without payment of costs, the sheriff shall not be allowed any fees; but the commissioners' court shall annually allow the sheriff such compensation for *ex officio* services, not exceeding thirty dollars, as they shall think proper.

CORONER'S FEES:

SEC. 15. For holding an inquest over a dead body, when required by law, five dollars.

For summoning the jury, seventy-five cents.

For burial expenses, &c., ten dollars.

All of which fees shall be certified by the coroner, and paid out of the county treasury, when the same can not be collected out of the estate of the deceased. And whenever the coroner shall be required by law to perform any of the duties appertaining to the office of sheriff, he shall be entitled to the like fees and com-

pensation, as shall be at the time being, allowed by law to the sheriff for the performance of similar services.

JUSTICE'S FEES IN CRIMINAL CASES :

SEC. 16. For taking each complaint in writing, under oath, twenty-five cents.

For taking the examination of the accused, and the testimony of witnesses in cases of felony, and returning the same to the circuit court, for every seventy-two words, twelve and a half cents.

For each warrant, twenty-five cents.

Taking recognizance, and returning the same, fifty cents.

For each subpoena, twenty-five cents.

Administering each oath, six and a fourth cents.

For each jury warrant in a trial of assault and battery, twenty-five cents.

For entering the verdict of the jury, twelve and a half cents.

For each order or judgment thereon, twenty-five cents.

For each *mittimus*, twenty-five cents.

For each execution, twenty-five cents.

For entering each appeal, twenty-five cents.

For transcript of judgment and proceedings in cases of appeal, fifty cents.

But in all cases where the defendant shall be acquitted, or otherwise legally discharged, without the payment of costs, the justice shall not be entitled to any fees.

JUSTICE'S FEES IN CIVIL CASES :

SEC. 17. For every warrant, summons or subpoena, eighteen and three-fourths cents.

For each continuance, twelve and a half cents.

Administering an oath, six and a fourth cents.

Issuing *dedimus* to take depositions, twenty-five cents.

Taking each deposition when required, for every seventy-two words, twelve and a half cents.

Entering judgment, twenty-five cents.

Issuing execution, twenty-five cents.

Entering security on docket, twenty-five cents.

Scire facias to be served on security, twenty-five cents.

Notification to each referee, twenty-five cents.

Entering the award of referees, thirty-seven and a half cents.

Entering appeal from justice's judgment, twenty-five cents.

For each transcript of the judgment and proceedings before the justice on appeal, twenty-five cents.

Issuing process of attachment, and taking bond and security, seventy-five cents.

Entering judgment on the same, twenty-five cents.

Docketing each suit, twelve and a half cents.

Taking the acknowledgment or proof of a deed or other instrument of writing, twenty-five cents.

For each precept, on forcible entry and detainer, fifty cents.

On trial, per day, two dollars.

Making complete copy of proceedings thereon, two dollars.

For each jury warrant, twenty-five cents.

For each marriage ceremony performed, one dollar.

For each certificate thereof, twenty-five cents.

For administering the oath to the finder or taker up in cases of estrays, &c., making an entry thereof, with the report of the appraisers, and making and transmitting a certificate thereof to the clerk of the county commissioners' court, fifty cents.

CONSTABLE'S FEES IN CRIMINAL CASES :

SEC. 18. For serving a warrant on each person named therein, twenty-five cents.

Mileage, to be computed from the office of the justice who may have issued the same, to the place of service, for each mile, six and a fourth cents.

Serving each subpoena, twelve and a half cents.

Mileage from the justice's office to the residence of the witness, per mile, six and a fourth cents.

Taking each person to jail when committed, twenty-five cents.

Mileage from the justice's office to the jail, per mile, six and a fourth cents.

For summoning jury in case of assault and battery, fifty cents.

But in all cases where the defendant shall be acquitted, or otherwise discharged, without the payment of costs, the constable shall not be entitled to any fees.

CONSTABLE'S FEES IN CIVIL CASES :

SEC. 19. Serving and returning each warrant or summons, twenty-five cents.

Serving and returning each subpoena, twelve and a half cents.

Serving and returning execution, fifty cents.

Advertising property for sale, twenty-five cents.

Commission on sales not exceeding ten dollars, ten per centum; and on all sales exceeding that sum, six per centum.

Attending trial before a justice in each jury cause, twenty-five cents.

Serving jury warrant in each case, fifty cents.

Each day's attendance on the circuit court, when required to be paid out of the county treasury, one dollar.

Mileage, when serving a warrant, summons or subpoena, from the justice's office to the residence of the defendant or witness, per mile, five cents.

For serving warrant on appraisers in cases of estrays, &c., twenty-five cents.

WITNESSES' FEES :

SEC. 20. Every witness attending in his own county, on trial, per day, fifty cents.

Attending in a foreign county, going and returning, per day, accounting twenty miles for each day's travel, one dollar.

Every witness, when attending for the purpose of having his deposition taken, per day, fifty cents.

Provided, That no allowance or charge shall be made for the attendance of witnesses as aforesaid, unless the witness shall make affidavit of the number of days he or she actually attended; and that such attendance was at the instance of one or both of the parties, or his, her or their attorney.

JUROR'S FEES :

SEC. 21. To every juror sworn in each civil action in the circuit court, twenty-five cents.

To each juror sworn in a civil case, before a justice of the peace, twenty-five cents.

For attending an inquest over a dead body, when summoned by the coroner, to be paid out of the county treasury, twenty-five cents.

ARBITRATOR'S FEES :

SEC. 22. To each arbitrator for every day he shall be necessarily employed in performing the duties of his appointment, where the award is to be made the judgment of the circuit court, two dollars.

For every arbitrator or referee, for each day he shall be necessarily employed in making up his award in cases before justices of the peace, one dollar.

RECORDER'S FEES :

SEC. 23. For recording all deeds, mortgages and other instruments of writing, for every one hundred words, fifteen cents.

For copies of the same, when requested, for every one hundred words, twelve and a half cents.

For every search of record, twelve and a half cents.

Official certificate, with seal, when requested, thirty-seven and a half cents.

For each certificate without seal, twenty-five cents.

For entering each tract of land over five in each deed or conveyance, six and a fourth cents.

FEES OF NOTARIES PUBLIC :

SEC. 24. For noting a bond, promissory note or bill of exchange for protest, twenty-five cents.

For protesting and recording the same, fifty cents.

For noting without protest, twenty-five cents.

For notice to indorsers, &c., each, twenty-five cents.

For affixing the seal notarial, twenty-five cents.

For each certificate, twenty-five cents.

COUNTY SURVEYOR'S FEES :

SEC. 25. For establishing each quarter-section of land, two dollars and fifty cents.

For establishing each half-quarter section of land, two dollars.

For each town lot over ten, and not exceeding forty in number, thirty-seven and a half cents.

For each town lot over forty, and not exceeding one hundred, twenty-five cents.

For each lot over and above one hundred, eighteen and three fourths cents.

For laying off land, under a writ of *ad quod damnum*, two dollars and fifty cents.

And each surveyor shall be allowed the sum of two dollars per day in full compensation for traveling expenses, when necessarily engaged in the discharge of the duties of his office.

FEES FOR GUARDING JAIL :

SEC. 26. To each man, for every twenty-four hours guarding jail when required, on producing the certificate of the jailer, sheriff, coroner or justice of the peace, of the same, to be paid out of the county treasury, one dollar.

And to the end that all persons chargeable with the fees aforesaid, due to the several above named officers, (except such as are to be paid by the respective counties,) may certainly know for what the same are charged, none of the fees hereinbefore mentioned, shall be payable to any such officer, until a bill of the same shall have been presented to the person chargeable with the same, stating the particulars of the said bill, and signed by the officer to whom the same are payable; or until a fee bill shall have been issued by the clerk, as hereinafter provided.

SEC. 27. If any or either of the aforesaid officers shall charge, claim, demand, exact or take, any other or greater fees than are hereinbefore set down and allowed for any of the services specified in this chapter, or shall charge, demand or take any of the said fees when the services for which such fees are charged, shall not have been actually performed, such officer shall pay to the party injured two dollars for every item so charged and exacted, to be sued for and recovered in any court having cognizance of the same: *Provided, always,* That if any person against whom any fee bill shall be charged, shall conceive himself or herself aggrieved by any such charges, that the same is overcharged, or contains charges for services not actually rendered by such officer, it shall be lawful for such person, after paying the same, or having replevied the said fee bill, by giving bond, with sufficient security, to pay the same at the next ensuing circuit court of his county, (and it shall be the duty of the sheriff, or other officer, to take such bond and allow said replevin,) to present the said fee bill to the circuit court of the county where the person so charged therewith shall reside, whose duty it shall be to inspect the said fee bill; and if it appear that any item or charge is contained in said fee bill not authorized by law, or for services not actually rendered, the said judge shall proceed to quash such fee bill and bond, if one be given; and if the money has been collected thereon, he shall order the clerk to restore the same, and shall impose a fine on such clerk in favor of the party injured, of not less than one dollar, nor more than three dollars, for every item erroneously charged in said fee bill by said clerk; and shall grant to the party injured, process of attachment, to recover back the amount of such fee bill when paid, and also the fine or fines so imposed; but if it shall appear to the said judge that such fee bill is correct, the party charged with the same shall pay to such clerk, an interest on the amount of such bill, at the rate of ten per centum per annum, from the time of the delivery of such bill till the same be paid.

SEC. 28. The clerks of the supreme and circuit courts, and the judges of probate shall, at or after every term of their respective courts, make and set down, in a book to be kept for that purpose, a fee bill in each cause in which costs shall have been adjudged, including the costs of sheriffs and other officers of court, setting down the costs of the plaintiff and defendant; which book shall be a public record; and for the purpose of collecting such costs, it shall and may be lawful for such clerk, and it is hereby made his duty, when required by any officer of the court, interested in the same, to make out a copy or transcript of such bill of costs and deliver the same to the sheriff or any constable of the county where the person or persons chargeable with the same, shall reside or have property; which fee bill, so issued, shall have the force and effect of an execution, and be collected in the same manner: *Provided,* Nothing herein contained shall be so construed as to prevent the collection of such costs by execution, on final judgments.

SEC. 29. If any sheriff or other officer, to whom any such fee bill shall have been delivered, shall neglect to make return thereof, or to pay the amount of such

fee bill, except his own fees, it shall and may be lawful for any party interested in such fee bill, to obtain a rule of court against such sheriff or other officer, and proceed against him by attachment, and recover the same according to the rules and practice of the court where such costs may have accrued.

SEC. 30. Clerks of the supreme and circuit courts shall not be required to make up or certify a complete record, except in capital criminal cases, and cases in which the title to land is in question, or by special order of the court; but such record shall only contain the declaration, plea, demurrer, rejoinder or other pleadings in the suit, together with the judgment of the court below given thereupon; nor unless directed by a party to insert such pleadings or papers as he may deem necessary, in which case, such party shall pay the additional costs; and if in any cause, where the clerk is not required by law, either party shall require a complete record, the party so requiring it, shall pay the cost of the same.

SEC. 31. Any person who has heretofore been, or who is at this time the sheriff of any county in this State, and in whose hands the clerks of their respective counties, have, agreeably to the statute of this State in such cases made and provided, put their fees for collection, and which fees, the sheriffs as aforesaid, have not collected, are hereby fully authorized to go on and make such collections, as if they had done so in strict conformity with the law; together with all fees which may be due to them for services as sheriffs rendered: *Provided*, That no division of a county shall, in any instance, interfere with such collections.

SEC. 32. The clerks of the circuit and county commissioners' courts, shall provide all the necessary books for their respective offices, and a safe press or presses, with locks and keys for the safe keeping of the archives of their respective offices; and the county commissioners' courts shall make allowances for the same, and for articles of stationery necessary for their respective courts, out of the county treasury, from time to time; and the clerk of the supreme court shall also procure the necessary books, stationery and presses, for the safe deposit of the archives of his office; which shall be certified by the said court to the auditor of public accounts, who shall draw a warrant or warrants on the State treasury for the amount of the same.

SEC. 33. It shall be the duty of the county commissioners' court in each county, as soon as the same shall be practicable, to cause a suitable room or rooms to be provided at the court house in their respective counties, for the offices of the clerks of the circuit courts, and county commissioners' courts; and when the same shall be so provided, the clerks shall keep their offices at the place so provided.

SEC. 34. In all cases on judgments, on which execution may, or shall hereafter issue, from any court of record, the clerk of the court from which the same shall issue, shall at the time of issuing thereof, make out under his signature, and deliver to the sheriff or coroner, as the case may be, with the execution, a detailed bill of the costs in the said suit, from its commencement to its termination, in order that the party paying the same may certainly know with and for what he is chargeable; which said bill, the said officer to whose hands the execution may so come, shall deliver to the party against whom the execution may be; and upon his replevying or paying the same, together with his certificate thereon, that the same was so replevied or paid by the said person.

SEC. 35. Should any officer concerned in issuing or executing any execution, hereafter to be issued as aforesaid, fail in the duty enjoined on him in the preceding section hereof, he shall forfeit and pay to the party injured, the sum of fifty dollars

with costs, to be recovered in any court of record in this State, and no imparlance or delay shall be allowed therein.

SEC. 36. The clerks of the several courts aforesaid, probate justices and justices of the peace, respectively, shall be required to set up in some conspicuous place in each of their offices, and there continually keep a fair and complete table of their fees, allowed by this chapter; and if any such officer shall fail to comply with the provisions of this section, or shall, at any time hereafter, for ten days together, not have such table continually kept up as aforesaid, he shall forfeit and pay for every such neglect, the sum of ten dollars, to be recovered before any justice of the peace of the proper county, to the use of any person or persons who may inform and sue for the same.

SEC. 37. The clerks of the courts of county commissioners shall not charge any fees for issuing writs of election, comparing election returns, issuing notices to supervisors of roads, issuing certificates of allowances made to individuals by the court, or for any other services rendered the county; but the courts shall allow their respective clerks such reasonable compensation as they may think right, as an *ex officio* fee, not exceeding twenty dollars per annum, exclusive of a reasonable allowance per day, for their attendance on the courts in term time.

SEC. 38. Every officer authorized by law to take proofs or acknowledgments of deeds, is allowed a fee of twenty-five cents, for each deed proved or acknowledged before him.

SEC. 39. It shall be the duty of the clerk of any circuit court in this State, in all cases where fees are remaining, belonging to and unpaid, in cases in the said court, whether disposed of or not, to the predecessor of said clerk, upon request of the said predecessor, his heirs or legal representatives, to issue his fee bill or execution therefor, as the case may be, under the seal of said court, and said fee bill shall have the force and effect of an execution; and the said clerk shall have no claim upon his said predecessor for the fees of issuing said fee bill or execution, but shall look to the party in the case liable therefor.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Act No. 16.]

CHAPTER XLII.

FERRIES AND TOLL BRIDGES.

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| <p>SECTION</p> <ol style="list-style-type: none"> 1. Ferry or toll bridge, when application made for, duty of county commissioners: <i>Provided</i>, notice of intention be given. 2. When established, license to be granted; <i>Provided</i>, tax assessed be paid, and bond entered into. 3. Boats, ferrymen, landing, &c. 4. Toll bridge or turnpike to be kept in good repair. 5. Duty of keeper; public messengers to pass free; who considered such; penalty for neglect of keeper; damages, how collected; keep- | <p>SECTION</p> <ol style="list-style-type: none"> er excused in case of high water, &c.; jurymen, when entitled to pass free. 6. Rates of toll, how fixed, and penalty for overcharging. 7. List of rates to be posted up, and penalty for neglect or refusal. 8. Order of crossing; penalty for violation of; who shall be first when all can not go. 9. Rights of owners or keepers. 10. Ferries and toll bridges heretofore established and continued, declared further established. 11. Penalty for running boat without license. |
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SECTION

12. Keepers of ferries, toll bridges and turnpike gates exempt from military duty, road labor, and serving on jury.
13. Proprietor of ferry, toll bridge or turnpike

SECTION

- road, to show cause why same shall not be discontinued for neglect of duty.
14. Annual tax, amount of, and how assessed.
15. County may purchase.
16. Keeping without license, penalty for.

SECTION 1. Whenever it shall be considered necessary to establish a ferry or toll bridge across any lake, river, creek, or any other water course within the limits or upon the borders of this State, or to turnpike or causeway any public road or highway, it shall be the duty of the county commissioners' court of the proper county, on due application being made by any qualified person or persons, to establish and confirm the same by a special order, to be made for that purpose, under such regulations, restrictions and forfeitures as are hereinafter directed and pointed out: *Provided*, That no such application shall avail any such person or persons as aforesaid, unless his, her or their intention in relation thereto, shall have been previously published in some public newspaper printed in this State, or advertised on the door of the court house, and in three other of the most public places in the county, in which such ferry, toll bridge or turnpike road is proposed to be established, for at least four weeks successively, next preceding the sitting of the court at which the same shall be made: *And, provided further*, That the proprietor or proprietors of the lands adjoining to, or embracing such water course as aforesaid, over which any such ferry or toll bridge shall be proposed to be established as aforesaid, or where any such turnpike road shall pass as aforesaid, shall, at all times, have the preference in establishing or erecting the same, in all cases where application shall be made for that purpose, before such privilege shall have been granted to any other person or persons as aforesaid.

SEC. 2. When any ferry, toll bridge or turnpike road shall be established as aforesaid, it shall be the duty of the court establishing the same, to direct their clerk to issue to the proprietor or proprietors thereof, a license under the seal of such court, to keep the same according to law: *Provided*, That such proprietor or proprietors as aforesaid, to whom any such license may be directed to be issued as aforesaid, shall, before the issuing thereof, pay into the county treasury, or to such person or persons as shall be authorized to receive the same, the amount of the first year's tax, which may be assessed upon such ferry, toll bridge or turnpike road, by said court, and specified in the order establishing the same, and enter into bond with one or more sufficient securities, to be approved by the court, in a sum not less than one hundred, nor more than five hundred dollars; payable to the county commissioners of the proper county, and their successor in office, for the use of such county, with a condition therein contained, that he, she or they, will keep such ferry, toll bridge, or turnpike road according to law; and if default shall, at any time, be made in the condition of said bond, damages, not exceeding the penalties therein mentioned, may be sued for, and recovered in the name of the county commissioners for the use of the county wherein such ferry, toll bridge or turnpike road shall have been established, in any court having competent jurisdiction.

SEC. 3. Each ferry-keeper shall be furnished and provided with a good tight boat or boats, if more than one be necessary, and other small craft of sufficient number, dimensions, strength and steadiness, for the safe and speedy transportation of all passengers, their teams, horses, cattle and other animals, as well as their goods, chattels and effects; and the said boat or boats, and other small craft shall, at all times, be well furnished with suitable oars, setting poles, rigging and other imple-

ments necessary for the service thereof; and also with men of sufficient number, strength, discretion and skill to manage the same; and such ferry-keeper shall, at all times, keep the place of embarking and landing in good repair, by cutting away the banks and erecting wharves and causeways when necessary, so that passengers, their teams, horses, cattle and other property, may be embarked and landed without danger or unnecessary delay.

SEC. 4. Every keeper of a toll bridge or turnpike road, shall, in like manner, be required to keep the same at all times in good repair, so as to afford a safe and speedy passage to all persons, their teams, horses, cattle and other animals, who may have occasion to use the same.

SEC. 5. Every keeper of a ferry, toll bridge or turnpike road as aforesaid, shall give constant and diligent attention to the same, from daylight in the morning until dark in the evening of each day, and shall give passage to all public messengers and expresses, to all grand and petit jurors, when going to and returning from court, without any fee or reward whatever: *Provided*, That no messenger or express shall be considered as being sent on public service, within the meaning of this chapter, unless he shall have been dispatched by a commander-in-chief, major or brigadier general, colonel, lieutenant-colonel, major or commandant of some military post or establishment, to the governor or commander-in-chief of the militia of this State, or *vice versa*; and the dispatch carried by such messenger or express, be indorsed, "on public service," and signed by the officer sending the same. And all such keepers of ferries, toll bridges and turnpike roads as aforesaid, shall also be obliged at any hour of the night, if required, except in cases of evident danger, to give passage to all public messengers and expresses as aforesaid; and also to all other persons requiring the same, on their paying or tendering double the rate of ferriage or toll allowed to be taken during the day time. And if any such keeper of a ferry, toll bridge or turnpike road as aforesaid shall, at any time, neglect or refuse to give passage to such person or persons, or their property as aforesaid, he or she so offending, shall forfeit and pay five dollars for every such offence to the party aggrieved, before any justice of the peace of the county wherein such offence shall be committed, and shall also be liable to an action on the case, for any special damage which any such person may sustain in consequence of such neglect or refusal. But no ferryman shall be required to put off from shore, or to attempt to pass any such water course as aforesaid, when it manifestly appears to be hazardous so to do, by reason of any flood, storm, tempest or ice; nor shall any keeper of a ferry, toll bridge, or turnpike road as aforesaid, be compellable, (except as is hereinbefore excepted,) to give passage to any person or persons, or to his, her or their property as aforesaid, until the fare or toll properly chargeable by such keeper, shall have been fully paid or tendered; and every juryman, to entitle him to the benefit of this section, shall produce to the ferry-keeper, &c., the certificate of the sheriff of his county, that he has been duly summoned to serve on the grand or petit jury at the term of the court, to or from which he is going.

SEC. 6. The county commissioners' courts in their respective counties, are authorized and required to fix, from time to time, the rates, fare or toll, which each keeper of any ferry, toll bridge or turnpike road, shall hereafter demand for the passage of all persons, wagons, carts, carriages, horses, cattle, sheep, hogs and other property, having due regard to the breadth and situation of the stream or water course over which such ferry or bridge shall be established, the dangers and difficulties incident thereto, the length, breadth and quality of the road, and the pub-

licity of the place at which the same shall have been established. And every such keeper of a ferry, toll bridge or turnpike road as aforesaid, who shall, at any time, demand and take more than the fare or toll so stated and allowed as aforesaid, shall forfeit and pay to the party aggrieved, for every such offence, the sum of five dollars over and above the amount which shall be thus illegally demanded and taken, to be recovered before any justice of the peace of the county wherein such offence shall be committed.

SEC. 7. Each keeper of a ferry, toll bridge or turnpike road, which now is or shall hereafter be established in this State, shall be required to set or post up in some conspicuous place, immediately adjoining his or her ferry landing, toll bridge or turnpike gate, a painted, printed or written list of the several rates or fares, which shall be chargeable at such ferry, toll bridge or turnpike gate, so that the same shall not exceed those which shall, from time to time, be allowed by law; which said lists of fares or rates as aforesaid, shall at all times, be painted, printed or written in a plain, legible manner, and posted up so near the place or places where persons shall pass across such ferry, toll bridge or turnpike road as aforesaid, that the same shall be open and legible to all such passengers: And if, at any time, any such keeper as aforesaid, shall refuse or neglect to put up such list of rates or fares as aforesaid, it shall not be lawful to charge any ferriage or toll, or to take any compensation whatever, at any such ferry, toll bridge or turnpike gate, during such delinquency.

SEC. 8. All persons shall be received into such ferry boats or other vessels as aforesaid, and conveyed across the water course over which the same shall be established, according to their arrival or first coming to the said ferry: And if any ferry-keeper shall act contrary to this regulation, he shall forfeit and pay the sum of three dollars for every such offence, to the party aggrieved, recoverable before any justice of the peace of the county wherein such offence shall have been committed: *Provided*, That all public officers, or such as go on public or urgent occasion, as post riders, couriers, physicians, surgeons and midwives, shall, in all cases, be the first carried over, where all can not go at the same time.

SEC. 9. The owner or owners, keeper or keepers, at all ferries and toll bridges, which now are, or hereafter shall be established by law, and kept agreeably to this chapter, shall have the exclusive privilege of the transportation or passage of all persons, their teams, horses, cattle and other property over or across the same, and be entitled to all the fare by law arising therefrom: *Provided*, That nothing herein contained shall be construed to prevent any person or persons from crossing any stream or water course, over which any such ferry or toll bridge shall be established as aforesaid, in his or her own boat or other craft, on his or her own business; and also to take in and cross his neighbors where the same is done without fee, and not with intention to injure any ferryman near.

SEC. 10. All ferries heretofore established and confirmed over the river Ohio, to the proprietor or proprietor of land on the western shore of said river, by the county commissioner' courts of any of the counties bounded by or situate upon said river, as well as all other ferries and toll bridges which have, at any time, been established over any other of the lakes, rivers, creeks or other water courses, within the limits or upon the borders of this State, and where the same have been kept in operation or repair, from time to time, according to law; and have not at any time since their establishment been discontinued or abandoned, shall be, and they are

hereby declared to be established ferries and toll bridges, within the meaning of this chapter.

SEC. 11. If any person or persons except those whose ferries or toll bridges are established and confirmed by this chapter, or shall hereafter be established and licensed by some county commissioners' court under the provisions of this chapter, shall, at any time, run any boats or other craft, for the purpose of conveying passengers or their property across any such water course as aforesaid, within three miles of any ferry or toll bridge which now is, or hereafter shall be established as aforesaid, except as is hereinbefore allowed, he, she or they so offending, shall forfeit every such boat or boats, or other craft to the owner or proprietor of the ferry or toll bridge within three miles of which the same shall be run as aforesaid; and the owner or proprietor of such ferry or toll bridge may, at any time after such forfeiture shall have accrued, enter upon and take possession of such boat or boats, or other craft, to his or her own use; and such offender shall, moreover, pay to the proprietor of such ferry or toll bridge as aforesaid, who may be aggrieved as aforesaid, the sum of fifteen dollars for each person who may be thus unlawfully carried or conveyed across any such water course as aforesaid, to be recovered by motion before any justice of the peace of the proper county, upon giving to such offender five days' notice of the time and place of making such motion; which notice may be served on such person or persons, either in or out of the State, by delivering or tendering a copy thereof.

SEC. 12. For the encouragement of ferry-keepers, and the keepers of the gates of toll bridges and turnpike roads, and in consideration of their giving a free passage to public messengers and others exempted by this chapter, all men necessarily attending on ferries, toll bridges or turnpike gates in this State, shall be free from military duty, of opening and repairing highways, so far as personal service is required, and from serving on juries.

SEC. 13. If any ferry or ferries which now are, or hereafter may be established as aforesaid, shall not be furnished with sufficient boat or boats, or other craft, with the necessary oars, setting poles, rigging, and other implements for the service thereof, and also with a sufficient number of able bodied and skilful ferrymen, as is provided in the third section of this chapter, within three months from the establishment thereof, or if any toll bridge or turnpike road, which now is, or hereafter shall be established as aforesaid, shall not be erected and completed agreeably to the terms and conditions imposed by the county commissioners' court, within twelve months after the establishment thereof, or if any such ferry, toll bridge or turnpike road shall not, at any time hereafter, be kept in good condition and repair, agreeably to the provisions of this chapter, or if the same shall, at any time be abandoned, disused or unfrequented for the space of six weeks, it shall and may be lawful for the county commissioners' court of the proper county, on complaint being made, to summon the proprietor or proprietors of such ferry, toll bridge or turnpike road, to show cause why the same should not be discontinued, and their license revoked; and decide thereon according to the testimony adduced, and as shall be agreeable to equity and justice; which decision, when made, shall be valid in law to all intents and purposes, but subject to appeal to the circuit court, as in other cases.

SEC. 14. All ferries, toll bridges and turnpike roads, which now are, or hereafter may be established as aforesaid, shall be subject to an annual tax of not less than two, nor more than one hundred dollars, in the discretion of the county com-

missioners' court of the county in which the same shall be located; which tax, when assessed, shall be collected and paid over as the other taxes are, and shall constitute a part of the county revenue.

SEC. 15. If the county in which any toll bridge or turnpike road shall be established and erected as aforesaid, shall, at any time, pay or cause to be paid to the proprietor or proprietors thereof, the original cost of such toll bridge, or turnpike road as aforesaid, with ten per cent. interest thereon, then the said bridge or road shall cease to be private property, and shall become a public bridge or highway.

SEC. 16. No person shall establish, keep or use any ferry, toll bridge, or turnpike road as aforesaid, for the conveyance or passage of persons and their property as aforesaid, for profit or hire, unless he or she shall be licensed as directed by this chapter, under the penalty of five dollars for each offence, recoverable before any justice of the peace of the county wherein such offence shall be committed; the one-half thereof shall go to the person suing for the same, and the other half to the county; and if any person or persons not licensed as aforesaid shall, at any time, pass any person or persons, or their property as aforesaid, except as is provided in the ninth section hereof, over any lake, river, creek or any other water course, where any ferry or toll bridge shall, at the time, be established and kept as aforesaid, or within three miles thereof, either with or without compensation, with intent to injure the keeper or proprietor of such ferry or toll bridge, he, she or they shall incur the same forfeitures, and may be proceeded against in the same manner as is provided in the eleventh section: *Provided*, That it shall not be considered illegal for any person or persons to pass any person or his property without compensation, in cases where it shall be made to appear that such established ferry or toll bridge was not, at the time, in actual operation, or in sufficient repair to have afforded to such person or his property a safe and speedy passage.

APPROVED: March 3, 1845.

CHAPTER XLIII.

FORCIBLE ENTRY AND DETAINER.

SECTION

1. What deemed forcible entry and detainer.
2. Actions to be brought before justices of the peace; proceedings in such cases; how jury summoned.
3. Duty of sheriff; if defendant do not appear, *ex parte* trial may be had.
4. No indictment requisite; complaint to be under

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- oath; justices shall keep record of proceedings; effect of judgment.
5. Appeal to circuit court allowed; how taken and tried.
6. Appeal bond to provide for payment of rents; effect of judgment in circuit court.

SECTION 1. If any person shall make any entry into any lands, tenements or other possessions, except in cases where entry is given by law, or shall make any such entry by force, or if any person shall wilfully and without force, hold over any lands, tenements or other possessions, after the determination of the time for which such lands, tenements or possessions were let to him, or to the person under

whom he claims, after demand made in writing for possession thereof, by the person entitled to such possession, such person shall be adjudged guilty of a forcible entry and detainer, or a forcible detainer, as the case may be, within the intent and meaning of this chapter.

SEC. 2. Any justice of the peace of any county in this State, shall have jurisdiction of any case arising under this chapter, and on complaint upon oath of the party aggrieved, or his authorized agent, shall issue his summons directed to the sheriff, (or coroner, if the sheriff be interested,) of his county, commanding him, to summon the person against whom the complaint is made, to appear before such justice at a time and place to be stated in such summons, not more than twelve, nor less than six days from the time of issuing such summons, and which shall be served at least five days before the return day thereof, by reading the same to the defendant, or leaving a copy at his place of abode; and the said justice shall, also, at the same time, issue a precept to the sheriff or coroner, commanding him to summon a jury of twelve good and lawful men of the county, to appear before him at the return of such summons, to hear and try the said complaint. And if any part of the jurors shall fail to attend, or be challenged, the said justice may order the sheriff or coroner to complete the number, by summoning and returning others forthwith.

SEC. 3. The sheriff or coroner shall return to the said justice the summons and precept as aforesaid, on the day assigned for trial, and shall state on the back of said summons how the same was served, and on the back of said precept, a list of the names of the jurors. And if the defendant does not appear, the justice shall proceed to try the said cause, *ex parte*, or may, in his discretion, postpone the trial for a time not exceeding ten days; and the said justice shall also issue subpoenas for witnesses, and proceed in the trial of said cause, as in other cases of trial by jury.

SEC. 4. No indictment or inquisition shall be necessary in any case arising under this chapter; but the justice shall set down in writing, the complaint, under oath, particularly describing the lands, tenements or possessions in question, and shall keep a record of the proceedings had before him; and if the jury shall find the defendant guilty, he shall give judgment thereon, for the plaintiff to have restitution of the premises and his costs, and shall award his writ of restitution; and if a verdict be given for the defendant, judgment shall be given against the plaintiff for costs and execution issued therefor.

SEC. 5. If either party shall feel aggrieved by the verdict of the jury or the decision of the justice on any trial had under this chapter, he or she may have an appeal to the circuit court, to be obtained in the same manner and tried in the same way as appeals from justices of the peace in other cases.

SEC. 6. If the defendant or defendants appeal, he or they shall also insert in the appeal bond, a clause conditioned for the payment of all rents becoming due, if any, from the commencement of the suit, until the final determination thereof. If the appeal be taken within five days after the trial had before the justice, no writ of restitution or execution shall be issued by him; and the circuit court, on giving judgment for the plaintiff, shall award a writ of restitution, and execution for costs, including the costs before the justice; and if judgment be for the defendant, he shall recover costs, in like manner, and have execution for the same.

APPROVED: March 3, 1845.

CHAPTER XLIV.

FRAUDS AND PERJURIES.

SECTION

1. When action brought, promise or agreement to be in writing and signed by the party charged, or other authorized person.
2. Conveyances of real and personal estate, in what cases shall be deemed fraudulent.
3. *Bona fide* conveyances, when good consideration, not deemed fraudulent.
4. Trusts in relation to real estate, not in writing, void; exceptions as to resulting trusts.
5. Fraudulent devises in real estate declared void.
6. Person making fraudulent devise, his heirs, &c., subject to same action, as he might be, if living.
7. Guardian, *ad litem*, when may be appointed.

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8. When personal estate of ancestor insufficient to pay debts, real estate in hands of heirs or devisees may be taken in execution.
9. In action against heir or devisee, he may plead *riens per descent*; reply of plaintiff thereto; how issue tried and damages assessed.
10. If, on judgment against executor, sufficient property of deceased be not found, suit may be brought against heir or devisee.
11. If estate be not administered upon within one year after death, separate suit may be maintained against heir or devisee.
12. Facts shall be distinctly set forth in declaration.

SECTION 1. No action shall be brought, whereby to charge any executor or administrator upon any special promise to answer any debt or damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage, or upon any contract for the sale of lands, tenements or hereditaments, or any interest in, or concerning them, for a longer term than one year; or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

SEC. 2. Every gift, grant or conveyance of lands, tenements, hereditaments, goods or chattels, or of any rent, common or profit of the same, by writing or otherwise; and every bond, suit, judgment or execution had and made, or contrived of malice, fraud, covin, collusion or guile, to the intent or purpose to delay, hinder or defraud creditors of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures, or to defraud or deceive those who shall purchase the same lands, tenements or hereditaments, or any rent, profit or commodity out of them, shall be from thenceforth deemed and taken only as against the person or persons, his, her or their heirs, successors, executors, administrators or assigns, and every of them, whose debts, suits, demands, estates and interests by such guileful and covinous devices and practices as aforesaid shall, or might be, in anywise disturbed, hindered, delayed or defrauded, to be clearly and utterly void; any pretence, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding; and moreover, if a conveyance be of goods and chattels, and be not, on consideration, deemed valuable in law, it shall be taken to be fraudulent, unless the same be by will, duly proved and recorded, or by deed in writing, acknowledged or proved, if the same deed includes land, also, in such manner as conveyances of land are by law directed to be acknowledged or proved; or if it be goods and chattels only, then acknowledged or proved by two witnesses, before any

court of record in the county wherein one of the parties lives, within eight months after the execution thereof, or unless possession shall really and *bona fide* remain with the donee; and in like manner where any loan of goods and chattels shall be pretended to have been made to any person, with whom or those claiming under him, possession shall have remained for the space of five years, without demand made and pursued by due process at law, on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of an use, or property by way of condition, reservation, remainder or otherwise, in goods or chattels, the possession whereof shall have remained in another as aforesaid, the same shall be taken as to creditors and purchasers of the person aforesaid, so remaining in possession, to be fraudulent, and that the absolute property is with the possession, unless such loan, reservation, or limitation of use or property were declared, by will or deed in writing, proved and recorded as aforesaid.

SEC. 3. This chapter shall not extend to any estate or interest in any lands, goods or chattels, or any rents common or profit, out of the same, which shall be upon good consideration, and *bona fide* lawfully conveyed, or assured to any person or persons, bodies politic or corporate.

SEC. 4. All declarations or creations of trusts or confidences of any lands, tenements or hereditaments, shall be manifested and proved by some writing signed by the party, who is by law enabled to declare such trust, or by his last will in writing; or else they shall be utterly void and of no effect: *Provided*, That resulting trust or trusts created by construction, implication, or operation of law, need not be in writing, and the same may be proved by parol.

SEC. 5. All wills and testaments, limitations, dispositions or appointments of, or concerning any lands and tenements, or of any rent, profit, term or charge, out of the same, whereof any person or persons at the time of his, her or their decease, shall be seized in fee simple, in possession, in reversion, or remainder, or have power to dispose of the same by his, her or their last will and testament, shall be deemed and taken (only as against the person or persons, his, her or their heirs, successors, executors, administrators or assigns, and every of them whose debts, suits, demands, estates and interests, by such will, testament, limitation, disposition or appointment as aforesaid, shall, or might be in anywise disturbed, hindered, delayed or defrauded,) to be fraudulent, void and of none effect, any pretence, color, feigned or presumed consideration, or any other matter or thing to the contrary notwithstanding.

SEC. 6. Any person or persons, his, her or their heirs, devisees, executors, administrators, successors or assigns, and every of them, who shall or may have any debts, suits or demands against any person or persons who shall make any fraudulent devise as aforesaid, or who have any debts, suits or demands against any person or persons who shall die intestate, and have real estate to his, her or their heirs, to descend according to the laws of this State, shall, and may have and maintain the same action or actions, which lie against executors and administrators upon his, her or their bonds, specialities, contracts, agreements and undertakings, against the executors or administrators, and the heir or heirs, or against the executors or administrators, and the devisee or devisees, or may join the executors or administrators, the heir or heirs, and the devisee or devisees of such obligor or obligors, undertaker or undertakers as aforesaid, and shall not be delayed for the non-age of any of the parties.

SEC. 7. When any suit or action in law or equity, shall be brought against any heir or heirs, devisee or devisees, who shall be of non-age, it shall be lawful for the court to appoint a guardian, *ad litem*, for such infant heir or heirs, devisee or devisees, and may compel the person so appointed to act: *Provided*, That by such appointment, such person shall not be rendered liable to pay any costs of suit.

SEC. 8. When any lands, tenements or hereditaments, or any rents or profits out of the same shall descend to any heir or heirs, or be devised to any devisee or devisees, and the personal estate of the ancestor of such heir or heirs, or devisor of such devisee or devisees, shall be insufficient to discharge the just demands against such ancestor, or devisor's estate, such heir or heirs, devisee or devisees, shall be liable to the creditor of their ancestor or devisor, to the full amount of the lands, tenements or hereditaments, or rents and profits out of the same as may descend, or be devised to the said heir or heirs, devisee or devisees; and in all cases where any heir or heirs, devisee or devisees, shall be liable to pay the debt or debts of his executor or devisor, in regard of any lands, tenements or hereditaments, or any rent or profit arising out of the same, descending or being devised to him, her or them, and shall sell, alien or make over the same before any action brought, or process sued out against him, her or them, such heir or heirs at law, devisee or devisees, shall be answerable for such debt or debts to the value of the said lands, tenements and hereditaments, rents or profits, so by him, her or them sold, aliened or made over; and executions may be taken out upon any judgment so obtained against such heir or heirs, devisee or devisees, to the value of the said lands, tenements and hereditaments, rents and profits, out of the same, as if the same were his, her or their own proper debt or debts, saving and excepting that the lands and tenements, rents and profits, by him, her or them *bona fide* aliened, before the action brought, shall not be liable to such execution.

SEC. 9. When any action or suit is brought against any heir or heirs, devisee or devisees, he, she or they may plead *riens per descent*, at the time of the commencement of the action or suit, and the plaintiff in such action may reply, that he, she or they had lands, tenements or hereditaments, or rents or profits out of the same, from his, her or their ancestor, or devisor, before the commencement of the action or suit, and if upon issue joined thereupon, it be found for the plaintiff, the jury shall inquire of the value of the lands, tenements, hereditaments, or rents and profits out of the same, so descended or devised, and thereupon judgment shall be given and execution awarded as aforesaid; but if judgment be given against such heir or heirs, devisee or devisees, by confessing of the action without confessing the assets descended or devised, or upon demurrer or *nihil dicit*, or default, said judgment shall be given for the plaintiff, without any writ to inquire of the lands, tenements or hereditaments, or rents and profits out of the same, so descended or devised.

SEC. 10. In all cases where a judgment has been obtained against the executor or executors, administrator or administrators, of a deceased person, on a contract or undertaking, on which a joint action might have been maintained against the executor or executors, administrator or administrators, and the heir or heirs, devisee or devisees of the deceased person, if it shall appear by a judgment of record, or the return of a proper officer, that there is not property of the deceased person in the hands of the executor or executors, administrator or administrators, to satisfy such judgment, it shall be lawful to bring a separate suit or action against the heir or heirs, devisee or devisees on such contract or undertaking; and the judgment

against the executor or executors, administrator or administrators, if not satisfied, shall be no bar to the suit or action against the heir or heirs, devisee or devisees.

SEC. 11. If no person shall administer on the goods and chattels of a deceased person, for the space of one year after his or her death, a separate suit or action may be maintained against the heir or heirs, devisee or devisees, on all the contracts and undertakings of such deceased person.

SEC. 12. In all actions or suits commenced under the provisions of the preceding sections, the facts authorizing the suit to be brought separately against the heir or heirs, devisee or devisees, shall be distinctly set forth in the declaration.

APPROVED: March 3, 1845.

CHAPTER XLV.

FUGITIVES FROM JUSTICE.

SECTION

1. Fugitive from justice, when demanded by executive of another State, Governor shall issue warrant for his apprehension.
2. When executive of this State shall demand fugitive from executive of another State, he shall issue his warrant to messenger appointed to receive fugitive.
3. Expenses, how paid.
4. When judge or justice may issue warrant for apprehension of fugitives, if found guilty on examination, may be committed to jail, or may be bailed, if offence bailable; examination

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- to be reduced to writing, and returns thereof made to circuit court of the proper county; further proceedings defined.
5. When party admitted to bail, and no demand made, how court may proceed.
6. Forfeiture of recognizance, benefit of, to enure to State.
7. When complaint made against fugitive, security to be given for costs; further proceedings defined.
8. When prisoner escapes, Governor may offer reward for apprehension.

SECTION 1. Whenever the executive of any other State, or of any territory of the United States, shall demand of the executive of this State, any person as a fugitive from justice, and shall have complied with the requisitions of the act of Congress in that case made and provided, it shall be the duty of the executive of this State to issue his warrant under the seal of the State, to apprehend the said fugitive, directed to any sheriff, coroner, or constable of any county of this State, or other person whom the said executive may think fit to entrust with the execution of said process: Any of the said persons may execute such warrant any where within the limits of this State, and convey such fugitive to any place within this State, which the executive in his said warrant shall direct.

SEC. 2. Whenever the executive of this State shall demand a fugitive from justice from the executive of any other State, he shall issue his warrant, under the seal of the State, to some messenger, commanding him to receive the said fugitive and convey him to the sheriff of the proper county where the offence was committed.

SEC. 3. The expenses which may accrue under the two foregoing sections, being first ascertained to the satisfaction of the executive, shall, on his certificate, be allowed and paid out of the State treasury, on the warrant of the auditor.

SEC. 4. Whenever any person within this State shall be charged upon the oath or affirmation of any credible witness, before any judge or justice of the peace, with the commission of any murder, rape, robbery, burglary, arson, larceny, forgery or counterfeiting, in any other State or territory of the United States, and that the said person hath fled from justice, it shall be lawful for the said judge or justice to issue his warrant for the apprehension of said person. If, upon examination, it shall appear to the satisfaction of such judge or justice, that the said person is guilty of the offence alleged against him, it shall be the duty of the said judge or justice to commit him to the jail of the county; or if the offence is bailable according to the laws of this State, to take bail for his appearance at the next circuit court to be holden in that county. It shall be the duty of the said judge or justice to reduce the examination of the prisoner, and those who bring him, to writing, and to return the same to the next circuit court of the county where such examination is had, as in other cases; and shall also send a copy of the examination and proceedings to the executive of this State, so soon thereafter as may be. If, in the opinion of the executive of this State, the examination so furnished, contains sufficient evidence to warrant the finding of an indictment against such person, he shall forthwith notify the executive of the State or territory, where the crime is alleged to have been committed, of the proceedings which have been had against such person, and that he will deliver such person on demand, without requiring a copy of an indictment to accompany such demand; when such demand shall be made, the executive of this State shall forthwith issue his warrant under the seal of the State, to the sheriff of the county where the said person is committed or bailed, commanding him to surrender him to such messenger as shall be therein named, to be conveyed out of this State. If the said person shall be out on bail, it shall be lawful for the sheriff to arrest him forthwith, any where within the State, and to surrender him agreeably to said warrant.

SEC. 5. In cases where the parties shall have been admitted to bail, and shall appear at the circuit court according to the condition of his recognizance, and no demand shall have been made of him, it shall be in the power of the said court to discharge the said recognizance, or continue it, according to the circumstances of the case, such as the distance of the place where the offence is alleged to have been committed, the time that hath intervened since the arrest of the party, and the strength of the evidence against him. In no case shall such person be held in prison or to bail, longer than till the end of the second term of the circuit court after his caption. If no demand be made upon the sheriff for him within that time, he shall be discharged from prison, or exonerated from his recognizance, as the case may be.

SEC. 6. If the recognizance shall be forfeited, it shall enure to the benefit of the State.

SEC. 7. In all cases where complaint shall be made as aforesaid against any fugitive from justice, it shall be the duty of the judge or justice to take good and sufficient security for the payment of all costs which may accrue from the arrest and detention of such fugitive; which security shall be by bond, to the clerk of the circuit court, conditioned for the payment of costs as above; which bond, together with a statement of the costs which may have accrued on the examination, shall be returned to the office of the clerk of the circuit court; and upon the determination of the proceedings against such fugitive within that county, the clerk shall issue a fee bill as in other cases, to be served on the persons named in the bond, or any of

them; which fee bill shall be served and returned by the sheriff, for which he shall be allowed the same fees as are given him for serving notices. If the fees be not paid, on or before the first day of the next circuit court to be holden in and for that county, nor any cause then shown why they should not be paid, the clerk may issue an execution for the same, against those parties on whom the fee bill has been served; and when the said fees are collected, shall pay over the same to the persons respectively entitled thereto. The clerk shall be entitled to fifty cents for his trouble in each case, besides the usual taxed fees which are allowed in other cases for like services: Nothing herein contained shall prevent the clerk from instituting suits on said bonds, in the ordinary mode of judicial proceedings, if he shall deem it proper.

SEC. 8. If any person charged with, or convicted of treason, murder, rape, robbery, burglary, arson, larceny, forgery or counterfeiting, shall break prison, escape or flee from justice, or abscond and secrete himself, in such cases it shall be lawful for the Governor, if he shall judge it necessary, to offer any reward not exceeding two hundred dollars, for apprehending and delivering such person into the custody of such sheriff or other officer, as he may direct. The person or persons so apprehending and delivering any such person as aforesaid, and producing to the Governor, the sheriff's or justice's receipt for the body, it shall be lawful for the Governor to certify the amount of such claim to the auditor, who shall issue his warrant on the treasury for the same.

APPROVED: March 3, 1845.

CHAPTER XLVI.

GAMING.

SECTION

1. Gaming contracts and loans void.
2. Money lost by gaming may be recovered back, or sued for by another; what actions may be brought.
3. Judgments, conveyances, &c., given in violation hereof, void.

SECTION

4. Assignment of obligation, &c., not to defeat remedy.
5. Discovery may be enforced by bill; defendant discovering and restoring money, discharged.

SECTION 1. All promises, notes, bills, bonds, covenants, contracts, agreements, judgments, mortgages or other securities or conveyances, made, given, granted, drawn or entered into, or executed by any person or persons whatsoever, where the whole, or any part of the consideration thereof, shall be for any money, property or other valuable thing, won by any gaming, or playing at cards, dice, or any other game or games, or by betting on the side or hands of any person gaming, or for the reimbursing or paying any money or property, knowingly lent or advanced, at the time and place of such play, to any person or persons so gaming or betting, or that shall, during such play, so play or bet, shall be void and of no effect.

SEC. 2. Any person who shall, at any time or sitting, by playing at cards, dice or any other game or games, or by betting on the side or hands of such as do game,

lose to any one or more persons, so playing or betting, any sum or sums of money, or other valuable thing, amounting in the whole to the sum of ten dollars, and shall pay or deliver the same or any part thereof, the person or persons so losing and paying or delivering the same, shall be at liberty to sue for and recover the money, goods or other valuable thing, so lost and paid or delivered, or any part thereof, or the full value of the same, by action of debt, detinue, assumpsit or trover, from the respective winner or winners thereof, with costs, in any court of competent jurisdiction: in which action it shall be sufficient for the plaintiff to declare generally, as in actions of debt or assumpsit, for money had and received by the defendant to the plaintiff's use: or as in actions of detinue or trover upon a supposed finding, and the detaining or converting the property of the plaintiff to the use of the defendant, whereby an action hath accrued to the plaintiff, according to the form of this chapter, without setting forth the special matter. In case the person or persons who shall lose such money or other thing, as aforesaid, shall not within six months, really and *bona fide*, and without covin or collusion, sue, and with effect prosecute, for such money or other thing, by him lost and paid or delivered, as aforesaid, it shall be lawful for any other person to sue for, and recover treble the value of the money, goods, chattels and other things, with costs of suit, by special action on the case, against such winner or winners aforesaid; one-half to the use of the county, and the other to the person suing.

SEC. 3. All judgments, mortgages, assurances, bonds, notes, bills, specialties, promises, covenants, agreements, and other acts, deeds, securities or conveyances, given, granted, drawn or executed, contrary to the provisions of this chapter, may be set aside and vacated by any court of equity, upon bill filed for that purpose, by the person so granting, giving, entering into, or executing the same, or by his executors or administrators; or by any creditor, heir, devisee, purchaser or other person interested therein; or if a judgment, the same may be set aside on motion of any person aforesaid, on due notice thereof given.

SEC. 4. No assignment of any bill, note, bond, covenant, agreement, judgment, mortgage, or other security or conveyance as aforesaid, shall, in any manner, affect the defence of the person giving, granting, drawing, entering into or executing the same, or the remedies of any person interested therein.

SEC. 5. In all actions or other proceedings commenced or prosecuted under the provisions of this chapter, the party shall be entitled to discovery as in other actions, and all persons shall be obliged and compelled to answer, upon oath, such bill or bills as shall be preferred against them for discovering the sum or sums of money, or other thing so won as aforesaid. Upon the discovery and repayment of the money or other thing, so to be discovered and repaid, the person or persons who shall discover and repay the same, as aforesaid, shall be acquitted, indemnified and discharged from any other or further punishment, forfeiture or penalty, which he or they might have incurred, by the playing for, or winning such money or other thing, so discovered or repaid as aforesaid.

APPROVED: March 3, 1845.

CHAPTER XLVII.

GUARDIAN AND WARD,

SECTION

1. Orphan minors over fourteen years of age, may choose guardians; for those under that age, probate court shall choose.
2. Minor over fourteen may be notified to appear and choose guardian; if he do not, court of probate may appoint for him.
3. When orphan has estate not derived from father, who may be guardian, and how appointed.
4. Guardians may prosecute and defend for their wards.
5. Probate court shall take bond from guardian; its condition; suit and recovery thereon.
6. Court may compel person to account, and to give new security; may remove them for neglect.
7. Further power to remove; to appoint; how removed guardian or representatives of deceased person, may be compelled to deliver papers, &c., to successor.
8. Guardians, may collect money of ward; may loan money and lease real estate of ward; minority of female to cease at the age of eighteen years.
9. Guardian, to educate and support ward; may pay out ward's money therefor; what fund to be first used.

SECTION

10. When personal estate fails, real estate may be sold; proceedings in such cases; where application to be made if ward be resident; where, if non-resident.
11. Guardian to account for moneys on oath; moneys, how disposed of.
12. Appeals to circuit court, allowed.
13. Minors may sue by next friend, who shall give bond for costs.
14. Education of ward, when guardian removed for neglecting.
15. Concerning the loaning of ward's money; bond may include several minors.
16. Compensation of guardian.
17. Father may, by will, dispose of custody of living or posthumous child; also, the mother, if *sole*.
18. Rights and duties of person receiving such custody.
19. Rights and duties of such person respecting estate of minor.
20. General supervision of probate court over guardians.

SECTION 1. Courts of probate in their respective counties, shall admit orphan minors, above the age of fourteen years, the father being dead, to make choice of guardians, and appoint guardians for such as are under the age of fourteen years.

SEC. 2. Whenever it shall be represented to said court, that any orphan minor, above the age of fourteen years, has not a guardian, it shall be the duty of said court to issue a notification to such minor, to appear before the said court, at a time therein specified, and choose a guardian; and if such minor shall neglect or refuse to appear, or, on appearing, shall neglect to choose a guardian, the said court shall appoint one for such minor, as if said minor were under the age of fourteen years.

SEC. 3. When a minor, having a father living, shall be entitled to, or possessed of any estate, real or personal, not derived from his or her father, the said court of probate shall notify the father to appear and show cause why a guardian for such minor should not be appointed; and if sufficient reason be not shown, may appoint the father, if he be a proper person, if not, then such other person as the minor, if of the age of fourteen years, may choose; if such minor shall refuse or neglect, or be not of sufficient age to choose a guardian, the court shall appoint some fit person to be guardian for such minor. And when any person is appointed guardian, other than the father, he shall have the charge and management of the estate, but no control over the person of the minor.

SEC. 4. Guardians, by virtue of their office as such, shall be allowed in all cases, to prosecute and defend for their wards.

SEC. 5. The court of probate shall take of each guardian appointed under this chapter, bond with good security, in a sum double the amount of the minor's

estate, real and personal, conditioned as follows: "The condition of this obligation is such, that if the above bounden A. B., who has been appointed guardian for C. D., shall faithfully discharge the office and trust of such guardian according to law, and shall render a fair and just account of his said guardianship, to the court of probate for the county of _____, from time to time, as he shall be thereto required by said court, and comply with all the orders of said court lawfully made, relative to the goods, chattels and moneys of such minor, and render and pay to such minor, all moneys, goods and chattels, title papers and effects, which may come to the hands or possession of such guardian, belonging to such minor, when such minor shall be thereto entitled, or to any subsequent guardian, should such court so direct, then this obligation shall be void; otherwise to remain in full force and virtue:" which bond shall be taken to the people of the State of Illinois, for the use of such minor, and shall not become void upon the first recovery, but may be put in suit from time to time, against all or any one or more of the obligors, in the name, and to the use and benefit of any person entitled, by a breach thereof, until the whole penalty shall be recovered thereon.

SEC. 6. Courts of probate shall have power, in their respective counties, with or without previous complaint, by an order duly made and served, to oblige all guardians of minors, from time to time, to render their respective accounts upon oath, touching their guardianship, to said courts for adjustment, and shall have power to compel such guardians to give supplementary security whenever it shall judge proper, and, in default thereof, to remove such guardians.

SEC. 7. The court of probate, in all cases, shall have power to remove guardians for good and sufficient reasons, which shall be entered on record, and to appoint others in their place, or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as heretofore prescribed in this chapter; and when any guardian shall be removed or die, and a successor be appointed, the court shall have power to compel such guardian, so removed, or the executors or administrators of a deceased guardian, to deliver up to such successor, all goods, chattels, moneys, title papers or other effects, belonging to such minor, which may be in the possession of such guardian, so removed, or of the executors or administrators of a deceased guardian, or on any other person or persons who may have the same, and upon failure, to commit the party offending to prison, until he, she or they comply with the order of the court.

SEC. 8. Guardians shall have power to demand, sue for and receive, all moneys belonging to their wards, from executors and administrators, as soon as the same may be collected; or of any other person or persons in whose hands or possession the same may be: and it shall moreover be their duty to put to interest the moneys of their wards upon mortgage security, to be approved by the court; which letting shall always be for one year, and at the end of each year, the interest shall be added to, and made part of the principal: and said guardians shall also have power to lease the real estate of the ward, upon such terms and for such length of time as the court of probate shall direct: *Provided*, Such leasing shall never be for a longer time than during the minority of the ward; and the minority of females shall cease at the age of eighteen years.

SEC. 9. The guardian shall have power, under the direction of the court of probate, to superintend the education and nurture of the ward; and for that purpose, may pay out such portions of the ward's money as the court of probate shall from time to time, by order, direct: *Provided*, That the rents and profits arising from his

estate, and next, the interest on the ward's money, shall always be first resorted to, for the education and nurture of the ward.

SEC. 10. The circuit court may, for just and reasonable cause, being satisfied that the guardian has faithfully applied all the personal estate, order the sale of the real estate of the ward, on the application of the guardian, by petition in writing, stating the facts, and having given notice to all persons concerned, of such intended application, in some public newspaper printed in this State, or by setting up written notices in three of the most public places in the county, at least three weeks before the sitting of the court. Such order may enable the guardians to sell and convey the real estate for the support and education of the ward, or to invest the proceeds in other real estate. The court, in such order, shall direct the time and place of sale, the notice thereof to be given, and may direct the sale to be made on reasonable credit, and require such security of the guardian and purchaser, as the interest of the ward may require. It shall be the duty of the guardian making such sale, as soon as may be, to make return of such proceedings to the court granting the order, which, if approved by the court, shall be recorded, and shall vest in the purchaser or purchasers, all the interest the ward had in the estate so sold: application for the sale of such real estate shall be made in the county where the ward shall reside, although the estate may lie in a different county: but if the ward do not reside in this State, such application shall be made to the court of the county where the whole or a part of the estate shall be situated.

SEC. 11. An account of all moneys received by any guardian for the sale of real estate of any minor, as aforesaid, shall be returned on oath by such guardian, to the court of probate of the county where letters of guardianship were obtained; and such moneys shall be accounted for, and shall be subject to the order of the court of probate, in like manner as other moneys belonging to such minor.

SEC. 12. Appeals shall be allowed in all cases, from the order or judgment of the court of probate to the circuit court, the same in manner as is provided by law relative to wills and testaments, executors and administrators, and the settlement of intestates' estates.

SEC. 13. Minors may bring suits in all cases whatever, by any person that they may select as their next friend; and the person so selected shall file bond with the clerk of the circuit court, or justice of the peace before whom the suit may be brought, acknowledging himself bound for all the costs that may accrue and legally devolve upon such minor. And after bond shall have been so filed, said suit shall progress to final judgment and execution, as in other cases.

SEC. 14. Guardians shall educate their wards; and it is hereby made the duty of all civil county officers, to give information to the court of probate, neglect or omission of any guardian to his or her ward: *Provided*, When there are not moneys sufficient to teach the ward to read and write, and the ground rules of arithmetic, and the guardian refuses and neglects to have him so educated, the court shall have power to put out to any other person the ward, for the purpose of having the same so educated. The judge of probate shall, in all cases, when information is made of the neglect of any guardian to educate his or her ward, and on the facts being established, remove such guardian, and appoint a suitable person to act as guardian and superintend the education of such minor orphan.

SEC. 15. Guardians shall have power to loan out the moneys of their wards at interest, in sums not exceeding one hundred dollars, on personal security, to be approved by the judge of probate: *Provided*, It shall not be let for a longer time

than twelve months without a renewal, and an approval of the security by the court; and if neglected longer, it shall be at the responsibility of the guardian. In all cases of any person being appointed guardian for more than one ward at one time, the judge of probate shall include all in one bond.

SEC. 16. Guardians, on final settlement, shall be allowed such fees and compensation for their services as shall seem reasonable and just to the judge of probate, not exceeding what are, or shall be allowed by law, to administrators.

SEC. 17. Every father of sound mind and memory, of a child likely to be born, or of any living child, under the age of twenty-one years and unmarried, may, by his deed or last will duly executed, dispose of the custody and tuition of such child during its minority, or for any less time, to any person or persons in possession or remainder; and every mother of sound mind and memory, being *sole*, may, in like manner, dispose of the custody and tuition of a child living, if a father has made no such disposition, or in any other manner restrained the right of the mother.

SEC. 18. Every such disposition, from the time it shall take effect, shall invest in the person or persons to whom it shall be made, all the rights and powers, and subject him or them to all the duties and obligations of a guardian of such minor, and shall be valid and effectual against every other person claiming the custody or tuition of such minor: *Provided*, That the rights, powers, duties and obligations of such person or persons may be restrained and regulated by the person making such deed or last will as aforesaid.

SEC. 19. Any person to whom the custody of any minor is so disposed of, may take the custody and tuition of such minor, and may maintain all proper actions for the wrongful taking or detention of the minor; he shall also take the custody and management of the real and personal estate of such minor, unless restrained by the deed or will as aforesaid, during the time for which such disposition shall have been made, and bring such actions in relation thereto, as a guardian appointed under the provisions of the laws of the State.

SEC. 20. Guardians appointed under the provisions of this chapter, shall be subject to removal upon complaint of any person in behalf of the minor, to the circuit court of the county in which such guardian may reside, and proof made of misconduct or misbehavior in the performance of his duties, or of a failure to perform his duties, and upon the removal of a guardian, the said court is hereby vested with the power to appoint another guardian, and to make all such orders as may be necessary to compel the guardian removed to deliver over to the successor the custody of the minor, and to account for the estate, and pay over all moneys belonging to the ward, and to compel such successor to execute a bond with good security, in such penalty, and with such conditions as the court may deem necessary for the security of the rights of the minor, and the said court shall also have power, upon application of any person in behalf of the minor, to require all guardians appointed under the provisions of this chapter, by the father or mother, or by the court, to give bond and security in such penalty, and with such conditions as the court may deem necessary for the security and protection of the minors, and of his or her estate.

APPROVED: March 3, 1845.

CHAPTER XLVIII.

HABEAS CORPUS.

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| <p>SECTION</p> <ol style="list-style-type: none"> 1. In what cases writ of <i>habeas corpus</i> may be granted; by whom granted; mode of making application; writ, how to be directed, served, obeyed and returned. 2. When person not charged with crime is detained, what proceedings had. 3. On return of writ, allegations shall be heard; statement of grounds on which prisoner may be discharged. 4. When bail is taken, bond to be given for appearance; witnesses to be recognized to appear on trial; penalty if witness refuse to give bond; penalty if judge refuse to bind witness or prisoner. 5. Remanding of prisoner shall be by order of court; proceedings in case of second writ of <i>habeas corpus</i>. 6. Power of judge under second writ, to admit prisoner to bail, if offence is bailable, or if not bailable, to commit to prison. 7. Person once discharged, not to be again committed, unless again indicted, &c.; when he may be again arrested. 8. Cases in which the writ of <i>habeas corpus</i> may not be granted. 9. When prisoner may be discharged from custody | <p>SECTION</p> <ol style="list-style-type: none"> for want of prosecution; continuance of cause when witnesses can not be had. 10. Writ shall not be granted so as to delay trial in certain cases. 11. Provisions as to removal of prisoner from one place or one jail to another; penalty for improper removal. 12. Penalty if judge fail or delay to issue writ. 13. Officer refusing to execute and return writ, punished as for a contempt. 14. Officer having prisoner in custody, removing or concealing him to evade service of writ, how punished. 15. Officer having prisoner in custody, refusing to give him copy of warrant of commitment, how punished. 16. Penalty for re-arresting prisoner for same cause, after one discharge. 17. Pecuniary penalties herein imposed, to go to person for whose release writ issued. 18. General issue may be pleaded. 19. Recovery of penalties not to bar civil action for damages. 20. Who may issue writ; for what purposes; writ may run into any county; return of prisoner to proper custody; compensation of officers. |
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SECTION 1. If any person shall be committed or detained for any criminal or supposed criminal matter, it shall and may be lawful for him to apply to the supreme or circuit courts in term time, or any judge thereof in vacation, for a writ of *habeas corpus*, which application shall be in writing, and signed by the prisoner, or some person on his or her behalf, setting forth the facts concerning his imprisonment, and in whose custody he is detained; and shall be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy had been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given; the said court or judge to whom the said application shall be made, shall, forthwith award the said writ of *habeas corpus*, unless it shall appear from the petition itself, or from the documents annexed, that the party can neither be discharged nor admitted to bail, nor in any other manner relieved. Which said writ, if issued by the court, shall be under the seal of the court; if by a judge, under the hand of a judge; and shall be directed to the person in whose custody the prisoner is detained, and made returnable forthwith; to the intent that no officer, sheriff, jailer, keeper or other person, to whom such writ shall be directed, may pretend ignorance thereof, every such writ shall be indorsed with these words, "by the *habeas corpus* act;" and whenever the said writ shall by any person be served upon the sheriff, jailer, keeper or other person whatsoever, to whom the same shall be directed, or being brought to him, or being left with any of his under officers or deputies at the jail, or place where the prisoner is detained, he, or some

of his under officers or deputies shall, upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the court or judge awarding the said writ, and indorsed thereon, not exceeding ten cents per mile; and upon sufficient security given to pay the charges of carrying him back, if he shall be remanded, make return of such writ, and bring, or cause to be brought, the body of the prisoner before the court or judge who granted the said writ; or in case of the adjournment of the said court, or absence of the judge, then before any other of the judges aforesaid, and certify the true cause of his imprisonment within three days thereafter, unless the commitment of such person be in a place beyond the distance of twenty miles from the place where the writ is returnable: if beyond the distance of twenty miles, and not above one hundred miles, then within ten days; and if beyond the distance of one hundred miles, then within twenty days after the delivery of the writ as aforesaid, and not longer.

SEC. 2. Where any person not being committed or detained for any criminal, or supposed criminal matter, shall be confined or restrained of his or her liberty, under any color or pretence whatever, he or she may apply for a writ of *habeas corpus*, as aforesaid: which application shall be in writing, signed by the party, or some person on his or her behalf, setting forth the facts concerning his or her imprisonment, and wherein the illegality of such imprisonment consists, and in whose custody he or she is detained; which application or petition, shall be verified by the oath or affirmation of the party applying, or some other person on his or her behalf; if the confinement or restraint is by virtue of any judicial writ or process, or order, a copy thereof shall be annexed thereto, or an affidavit made that the same had been demanded and refused; the same proceedings shall thereupon be had in all respects, as are directed in the preceding section.

SEC. 3. Upon the return of the writ of *habeas corpus*, a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding five days thereafter, unless the prisoner shall request a longer time. The said prisoner may deny any of the material facts set forth in the return, or may allege any fact to show, either that the imprisonment or detention is unlawful, or that he is then entitled to his discharge; which allegations or denials shall be made on oath. The said return may be amended, by leave of the court or judge, before or after the same is filed, as also may all suggestions made against it, that thereby material facts may be ascertained. The said court or judge shall proceed in a summary way to settle the said facts, by hearing the testimony and arguments, as well of all parties interested civilly, if any there be, as of the prisoner, and the person who holds him in custody, and shall dispose of the prisoner as the case may require. If it appear that the prisoner is in custody by virtue of process from any court, legally constituted, he can be discharged only for some of the following causes: *first*, where the court has exceeded the limits of its jurisdiction, either as to the matter, place, sum or person; *second*, where, though the original imprisonment was lawful, yet by some act, omission or event, which has subsequently taken place, the party has become entitled to his discharge; *third*, where the process is defective in some substantial form required by law; *fourth*, where the process, though in proper form, has been issued in a case, or under circumstances, where the law does not allow process, or orders for imprisonment or arrest to issue; *fifth*, where, although in proper form the process has been issued or executed by a person either unauthorized to issue or execute the same, or where the person having the custody of the prisoner under such process is not the person empowered by law to detain him; *sixth*, where the process appears to have been obtained by false pretence or bribery; *seventh*, where there is

no general law, nor any judgment, order or decree of a court, to authorize the process, if in a civil suit, nor any conviction, if in a criminal proceeding. No court or judge, on the return of a *habeas corpus*, shall, in any other matter, inquire into the legality or justice of a judgment or decree of a court legally constituted. In all cases where the imprisonment is for a criminal, or supposed criminal matter, if it shall appear to the said court or judge, that there is sufficient legal cause for the commitment of the prisoner, although such commitment may have been informally made, or without due authority, or the process may have been executed by a person not duly authorized, the court or judge shall make a new commitment in proper form and directed to the proper officer, or admit the party to bail, if the case be bailable.

SEC. 4. When any person shall be admitted to bail, on *habeas corpus*, he shall enter into recognizance with one or more securities, in such sum as the court or judge shall direct, having regard to the circumstances of the prisoner and the nature of the offence, conditioned for his or her appearance at the next circuit court, to be holden in and for the county where the offence was committed, or where the same is to be tried: where any court or judge shall admit to bail, or remand any prisoner brought before him or them, on any writ of *habeas corpus*, it shall be the duty of the said court or judge, to bind all such persons as do declare any thing material to prove the offence with which the prisoner is charged, by recognizance, to appear at the proper court having cognizance of the offence, on the first day of the next term thereof, to give evidence touching the said offence, and not to depart the said court without leave; which recognizance, so taken, together with the recognizance entered into by the prisoner when he is admitted to bail, shall be certified and returned to the proper court on the first day of the next succeeding term thereof. If any such witness shall neglect or refuse to enter into a recognizance as aforesaid, when thereunto required, it shall be lawful for the court or judge to commit him to jail until he shall enter into such recognizance, or be otherwise discharged by due course of law: if any judge shall neglect or refuse to bind any such witness or prisoner, by recognizance as aforesaid, or to return any such recognizance, when taken as aforesaid, he shall be deemed guilty of a misdemeanor in office, and be proceeded against accordingly.

SEC. 5. Where any prisoner, brought up on a *habeas corpus*, shall be remanded to prison, it shall be the duty of the court or judge remanding him, to make out and deliver to the sheriff, or other person, to whose custody he shall be remanded, an order in writing, stating the cause or causes of remanding him. If such prisoner shall obtain a second writ of *habeas corpus*, it shall be the duty of such sheriff or other person to whom the same shall be directed, to return therewith the order aforesaid; and if it shall appear that the said prisoner was remanded for an offence adjudged not bailable, it shall be taken and received as conclusive, and the prisoner shall be remanded without further proceedings.

SEC. 6. It shall not be lawful for any court or judge, on a second writ of *habeas corpus*, obtained by such prisoner, to discharge the said prisoner, if he is clearly and specifically charged in the warrant of commitment with a criminal offence; but the said court or judge shall, on the return of such second writ, have power only to admit such prisoner to bail, where the offence is bailable by law, or remand him to prison where the offence is not bailable; or being bailable, where such prisoner shall fail to give the bail required.

SEC. 7. No person who has been discharged by order of a court or judge, on a *habeas corpus*, shall be again imprisoned, restrained or kept in custody for the same cause, unless he be afterwards indicted for the same offence, nor unless by the legal

order or process of the court wherein he is bound by recognizance to appear. The following shall not be deemed to be the same cause: *First*, if after a discharge for a defect of proof, or any material defect in the commitment in a criminal case, the prisoner should be again arrested on sufficient proof, and committed by legal process for the same offence: *Second*, If in a civil suit the party has been discharged for any illegality in the judgment or process, and is afterwards imprisoned by legal process for the same cause of action: *Third*, Generally, whenever the discharge has been ordered on account of the non-observance of any of the forms required by law, the party may be a second time imprisoned, if the cause be legal and the forms required by law, observed.

SEC. 8. No person shall be discharged under the provisions of this chapter, who is in custody under a commitment, for any offence exclusively cognizable by the courts of the United States, or by order, execution or process issuing out of such courts, in cases where they have jurisdiction; or who is held by virtue of any legal engagement or enlistment in the army; or who being subject to the rules and articles of war, is confined by any one legally acting under the authority thereof; or who is held as prisoner of war under the authority of the United States; or who is in custody for any treason, felony or other high misdemeanor, committed in any other State or territory of the United States, and who, by the constitution and laws of the United States, ought to be delivered up to the executive power of such State or territory; nor shall any negro or mulatto, held as a slave within this State, try his right to freedom, or be discharged from slavery under the provisions of this chapter, but for that purpose shall be put to his suit for freedom.

SEC. 9. If any person shall be committed for a criminal, or supposed criminal matter, and not admitted to bail, and shall not be tried on or before the second term of the court having jurisdiction of the offence, the prisoner shall be set at liberty by the court, unless the delay shall happen on the application of the prisoner. If such court at the second term, shall be satisfied that due exertions have been made to procure the evidence for, and on behalf of the people, and that there are reasonable grounds to believe that such evidence may be procured at the third term, they shall have power to continue such case till the third term. If any such prisoner shall have been admitted to bail for a crime other than a capital offence, the court may continue the trial of said cause to a third term, if it shall appear by oath or affirmation that the witnesses for the people of the State are absent, such witnesses being mentioned by name, and the court shown wherein their testimony is material.

SEC. 10. To prevent any person from avoiding or delaying his trial, it shall not be lawful to remove any prisoner on *habeas corpus* under this chapter, out of the county in which he or she is confined, within fifteen days next preceding the term of the court at which such person ought to be tried, except it be to convey him or her into the county where the offence with which he or she stands charged, is properly cognizable.

SEC. 11. Any person being committed to any prison, or in the custody of any officer, sheriff, jailer, keeper or other person, or his under officer or deputy, for any criminal, or supposed criminal matter, shall not be removed from the said prison or custody into any other prison or custody, unless it be by *habeas corpus*, or some other legal writ, or where the prisoner shall be delivered to the constable or other inferior officer, to be carried to some common jail, or shall be removed from one place to another, within the county, in order to his discharge or trial in due course

of law, or in case of sudden fire, infection or other necessity, or where the sheriff shall commit such prisoner to the jail of an adjoining county, for the want of a sufficient jail in his own county, as is provided in the chapter concerning jails and jailers, or where the prisoner, in pursuance of a law of the United States, may be claimed or demanded by the executive of any of the United States or territories. If any person or persons shall, after such commitment as aforesaid, make out, sign or countersign, any warrant or warrants for such removal, except as before excepted, then he or they shall forfeit to the prisoner or party aggrieved, a sum not exceeding three hundred dollars, to be recovered by the prisoner or party aggrieved, in the manner hereinafter mentioned.

SEC. 12. Any judge empowered by this chapter, to issue writs of *habeas corpus*, who shall corruptly refuse to issue such writ, when legally applied to, in a case where such writ may lawfully issue, or who shall, for the purposes of oppression, unreasonably delay the issuing of such writ, shall, for every such offence, forfeit to the prisoner or party aggrieved, a sum not exceeding five hundred dollars.

SEC. 13. If any officer, sheriff, jailer, keeper or other person, to whom any such writ shall be directed, shall neglect or refuse to make the returns as aforesaid, or to bring the body of the prisoner according to the command of the said writ, within the time required by this chapter, all, and every such officer, sheriff, jailer, keeper or other person, shall be deemed guilty of a contempt of the court or judge who issued said writ: whereupon, the said court or judge may, and shall issue an attachment against such officer, sheriff, jailer, keeper or other person, and cause him or them to be committed to the jail of the county, there to remain without bail or mainprize, until he or they shall obey the said writ; such officer, sheriff, jailer, keeper or other person, shall also forfeit to the prisoner or party aggrieved, a sum, not exceeding five hundred dollars, and shall be incapable of holding or executing his said office.

SEC. 14. Any one having a person in his custody, or under his restraint, power or control, for whose relief a writ of *habeas corpus* is issued, who, with intent to avoid the effect of such writ, shall transfer such person to the custody, or place him or her under the control of another, or shall conceal him or her, or change the place of his or her confinement, with intent to avoid the operation of such writ, or with intent to remove him or her out of the State, shall forfeit for every such offence, one thousand dollars, and may be imprisoned, not less than one year, nor more than five years. In any prosecution for the penalty incurred under this section, it shall not be necessary to show that the writ of *habeas corpus* had issued at the time of the removal, transfer or concealment therein mentioned, if it be proven that the acts therein forbidden were done with the intent to avoid the operation of such writ.

SEC. 15. Any sheriff or his deputy, any jailer or coroner, having custody of any prisoner, committed on any civil or criminal process of any court or magistrate, who shall neglect to give such prisoner a copy of the process, order or commitment, by virtue of which he is imprisoned, within six hours after demand made by said prisoner, or any one on his behalf, shall forfeit five hundred dollars.

SEC. 16. Any person who, knowing that another has been discharged by order of a competent judge or tribunal, on a *habeas corpus*, shall, contrary to the provisions of this chapter, arrest or detain him again for the same cause, which was shown on the return of such writ, shall forfeit five hundred dollars for the first offence, and one thousand dollars for every subsequent offence.

SEC. 17. All the pecuniary forfeitures incurred under this chapter, shall enure to the use of the party for whose benefit the writ of *habeas corpus* issued, and shall be sued for and recovered, with costs by the attorney general or circuit attorney, in the name of the State, by information; and the amount, when recovered, shall, without any deduction, be paid to the party entitled thereto.

SEC. 18. In any action or suit for any offence against the provisions of this chapter, the defendant or defendants may plead the general issue, and give the special matter in evidence.

SEC. 19. The recovery of the said penalties shall be no bar to a civil suit for damages.

SEC. 20. The supreme and circuit courts within this State, or the judges thereof, in vacation, shall have power to issue writs of *habeas corpus*, for the purpose of bringing the body of any person confined in any jail within the same, before them, to testify or be surrendered in discharge of bail. When a writ of *habeas corpus* shall be issued for the purpose of bringing into court any person to testify, or the principal to be surrendered in discharge of bail, and such principal or witness shall be confined in any jail in this State, out of the county in which such principal or witness is required to be surrendered or to testify, the writ may run into any county in this State, and there be executed and returned by any officer to whom it shall be directed; and the principal, after being surrendered, or his bail discharged, or a person testifying as aforesaid, shall, by the officer executing such writ, be returned to the jail from whence he was taken by virtue of an order of the court, for the purposes aforesaid; an attested copy of which, lodged with the jailer, shall exonerate such jailer from being liable for an escape. The party praying out such writ of *habeas corpus*, shall pay to the officer executing the same, such reasonable sum for his services, as shall be adjudged by the courts respectively.

APPROVED: March 3, 1845.

CHAPTER XLIX.

HORSES.

SECTION

1. Horses under one year old found running at large, to be taken up; how disposed of.
2. Horses over that age found running at large, how disposed of.
3. If owner do not take away horse, how disposed of.

SECTION

4. Diseased horse, &c., running at large, how disposed of; owner, how punished.
5. Offences against public decency, &c., how punishable.
6. Penalties, how recovered.

SECTION 1. It shall be lawful for any person to take up any stoned horse that may be found running at large out of the inclosure of the owner or keeper, more than one year old, and shall give notice thereof to the owner or keeper; and if such owner or keeper shall not take away or secure the same, allowing him one day for every fifteen miles he may reside from such taker up, the taker up shall take or

show the same to a justice of the peace within the county, and if it shall appear to such justice, that said horse is more than one year old, he shall issue his warrant to some person skilled in the business, to geld such stoned horse; or the same may be shown by the taker up, to any horse farrier, or other person of the county, well skilled in the age of horses; and if, upon view and examination, the horse shall be considered of the age of one year old, the person so examining, if he be skilled in the business, may geld and alter the same; if not, he shall give a certificate relative to the age thereof, and the taker up may then take said horse to some person skilled as aforesaid, and have the same gelded, and in performing the operation, reasonable care shall be taken to preserve the life of the animal; but should the owner not be known to the taker up, he shall advertise the same in three of the most public places in the county for ten days, giving a true description thereof; and if no owner or person on his behalf, shall, by that time appear and take charge of said horse, such taker up may proceed as above directed, and have the same gelded; and the owner shall pay to the taker up the sum of two dollars, together with reasonable charges for advertising and keeping the same, if the same be advertised, and the person altering shall be paid by the person applying to have the same done.

SEC. 2. It shall not be lawful for any person to alter any horse that is known to be kept for covering mares, which may accidentally break out of, or from the possession of the owner or keeper, and be found running at large; in that case the same shall be taken to the owner or keeper, without unnecessary delay, and the owner or keeper shall thereupon pay such person, so taking up and delivering the said horse, the sum of two dollars; and should the trouble and expense of taking up, keeping and delivering, be extraordinary and great, a further and liberal sum shall be paid by the owner or keeper of such horse to the person so taking up and delivering; but if the owner or keeper of any stoned horse, whether he be kept for covering mares or not, shall negligently or wilfully suffer the same to run at large, out of his inclosure, any person may take such horse up, and forthwith have the same gelded by some person skilled in the business, which shall be done carefully, and the owner or keeper shall pay to such taker up, the sum of five dollars; the taker up paying the fee or charge for gelding; and the owner or keeper shall, moreover, be liable for and pay all damages which any person may sustain, in consequence of such horse running at large; and if any horse shall die, or be injured, in consequence of such gelding, the same being carefully done by a person skilled in the business, as above contemplated, the owner or keeper thereof shall have no recourse whatever for damages upon such taker up, or person who shall have gelded the same.

SEC. 3. If the owner or keeper of any horse, or other person in his behalf, shall not appear and take charge of the same, after being altered as aforesaid, the taker up shall take care of, feed and nourish the same, until said horse shall have recovered, and shall then turn the same out, and the owner shall pay to such person a reasonable sum in money therefor.

SEC. 4. If any person shall suffer to run at large, or keep in any place where other creatures can have access to, and become infected, any horse, mare, gelding, mule or ass, that is known to the owner or the person having the same in his care and possession, to be afflicted with glanders, distempers or any other infectious disease, he shall be fined in the sum of twenty dollars, and shall be liable to pay all the damage that may result from such running at large, of such afflicted horse, mare,

gelding, mule or ass, to be recovered before any justice of the peace in the county, if the sum of damages be under one hundred dollars, otherwise in the circuit court.

SEC. 5. Any person letting any stallion to any mare, within any town or village in this State, the same not being incorporated, or immediately in the vicinity thereof, that may expose such conduct to public view, shall be liable to pay a fine not exceeding five dollars, at the discretion of any justice of the peace, to whom complaint shall be made, with costs of prosecution.

SEC. 6. All sums or penalties incurred under the provisions of this chapter, provided the same do not exceed one hundred dollars, shall be recovered before any justice of the peace; if above that, in the circuit court; and appeals shall be allowed as in other cases, to said court.

APPROVED: March 3, 1845.

CHAPTER L.

IDIOTS AND LUNATICS.

SECTION

1. If jury summoned to inquire, find person to be idiot, &c., court may appoint guardian.
2. Person appointed to give bond.
3. His powers and duties; may be removed for cause.
4. Shall collect and pay out money; may sell estate to pay debts and support idiot and family.
5. Guardian may sue and be sued; property may be sold on execution as in ordinary cases.

SECTION

6. Powers and duties of overseers of the poor and county commissioners, as to support of insane poor.
7. Disposition of property in case of recovery of reason, or death.
8. Contracts, &c., of lunatics, void as to lunatics, but good as to other party.
9. Persons taking advantage of lunatics, &c., deemed swindlers and punished.

SECTION 1. Whenever any idiot, lunatic or distracted person has any estate, real or personal, the judge of the circuit court of the county in which such idiot, lunatic or distracted person lives, shall, on the application of any creditor or relation, or if there be neither creditor nor relation, then any person living in such county, order a jury to be summoned, to ascertain whether such person be lunatic, insane or distracted; and if the said jury return, in their verdict, that such person is lunatic, insane or distracted, it shall be the duty of the judge aforesaid, to appoint some fit person to be the conservator of such idiot, lunatic or distracted person.

SEC. 2. The conservator of such estate, so appointed, shall enter into bond with sufficient security, to be approved by the said judge, to the treasurer of the county in which such idiot, lunatic or distracted person resides, in double the amount of such estate, for the faithful discharge of his duty.

SEC. 3. Such conservator shall have the entire care of the estate of such idiot, lunatic or distracted person, both real and personal; and such conservator shall forthwith make a true and perfect inventory of said estate, and return the same into the office of the clerk of the circuit court of said county, where it shall be kept on file; and shall render his account to the judge of said court, of the management of such trust, when thereto required; and shall be allowed by such judge reasonable compensation for his services. And said court shall have power to

remove such conservator for neglect of duty or mismanagement of his trust, and appoint another in his place.

SEC. 4. It shall be the duty of such conservator, to apply the annual income and the profits thereof, to the support of such idiot, lunatic or distracted person, his or her family. He shall have power to collect all debts due to such person, and to institute suits for that purpose, and to adjust and settle all accounts and debts due from him or her: he may sell or dispose of the personal estate to pay his or her debts, or to support him or her, or his or her family, and to educate the children of the same.

SEC. 5. The said conservator may sue and be sued, in every instance, as the representative of the person so insane, lunatic or distracted, and execution may issue in the name of, and against the said conservator, as representative as aforesaid; and all the property of such person may be sold to pay his or her just debts, that might or could be sold in other cases.

SEC. 6. The overseers of the poor in every county, shall take charge of the body of any person so insane, lunatic or distracted, and shall have power to confine him or her, and shall comfortably support such person, and make out an account thereof, and return the same to the county commissioners' court, whose duty it shall be to make an order, requiring the treasurer of said county to pay the same out of any money in the treasury of said county not otherwise appropriated.

SEC. 7. If such person, as aforesaid, shall be restored to his or her reason, then what remains of his or her property and estate, shall be returned to him or her; or in case of his or her death, to his or her heirs, executors or administrators, after a reasonable allowance to said conservator for his services, to be ascertained by the judge of said court.

SEC. 8. All contracts, agreements or credits with idiots, lunatics or distracted persons, either by note, bond, bill or otherwise, shall be void, as against said idiot, lunatic or distracted person; but persons making such contracts or agreements, with such idiot, lunatic or distracted person, shall be bound thereby.

SEC. 9. If any person or persons shall, by trading with, bartering, gaming or any other device, possess himself or herself, or themselves, of any property or valuable thing, belonging to any idiot, lunatic or notoriously distracted person, he, she or they shall be deemed guilty of swindling, and upon conviction thereof, shall be liable to all the penalties as in other cases of swindling, and any person may appear and prosecute with effect.

APPROVED: March 3, 1845.

CHAPTER II.

INCLOSURES AND FENCES.

SECTION

1. Common fields, owners of, may make rules and regulations.
2. May elect officers; their duties, &c.
3. Field committee may be chosen; their duties.
4. Proprietors may tax themselves.

SECTION

5. Authority of field committee.
6. Fencing, how regulated and kept up.
7. Lands adjoining common field, owners of, how to proceed.
8. Accounts for services, how audited and paid.

SECTION

9. Proprietors may fine either of themselves.
10. Common field shall be inclosed.
11. Fencing, regulations relative thereto, further defined.
12. Fence viewers, their duty when fence insufficient.
13. Costs and charges for making or repairing fence, how collected.
14. Inclosures, how may be made.
15. Damages for injury to inclosure, how recovered.

SECTION

16. Condition of fence, when trespass committed, how ascertained.
17. Penalty for injuring cattle, &c.
18. Animals trespassing, owners shall be notified.
19. Fence, when made on land of another, may be removed.
20. When fence made by mistake, owner shall not throw down.
21. Division of land, how made.

SECTION 1. Those who are or shall be proprietors or owners of land, in any field that is now occupied, used and declared, or that shall hereafter be occupied, used or declared to be a common field, may meet together, by themselves or agents, annually, on the first Monday in March, or such other days as they shall appoint, at some convenient place by them appointed, for the purpose of making such rules and regulations as to them shall seem meet for the well ordering of the affairs of such field, with respect to fencing and cultivation, and all other things necessary for the well managing the same, for the common interest of such proprietors; in which meeting the proprietors of such field, shall have full power by their major vote, to be computed by interest, to order all such affairs and make such regulations as they shall deem proper and expedient for the purpose aforesaid: *Provided, always,* That any person who is a proprietor in any common field, may, at any time hereafter, separate his, her or their land, from such common field, by fencing the same, subject only to making and keeping in repair fences in like manner as persons having inclosures adjoining to the common fields, as by this law directed.

SEC. 2. The better to enable them to carry on and manage the affairs of such field, they are hereby authorized and empowered to elect a chairman, clerk and treasurer, who shall be sworn to the faithful discharge of their duties, respectively; and the clerk shall enter and record all the acts, votes and resolutions of the said proprietors, relating to the management of the said common fields; and shall continue in his office until another shall be chosen and qualified to serve in his room; and that the election of chairman, clerk and treasurer, shall be annually or otherwise, as shall be determined by the said proprietors or a majority of them, in their lawful meetings assembled.

SEC. 3. For the better management of their common fields, they shall choose a committee of three persons, which shall be styled "the field committee," who shall be sworn to a faithful discharge of their duties; the said committee may call a meeting of the proprietors of such field when they shall judge it needful, by giving warning to such of them as live in the town or village, verbally, where such fields lie, and to the agents, if any, of non-resident proprietors, ten days previous to the time of such meeting, or by warning such proprietors in such other manner as they shall, in their lawful meetings, agree upon.

SEC. 4. The proprietors of common fields are hereby authorized and empowered, at their lawful meetings, to grant and levy taxes on themselves, when they shall judge it needful, according to their several interests in such fields, for defraying the charges that may arise in setting out and designating the proportion of, or altering the fence of such fields, in making gates and bridges, or for any other public or common charge, relating to such fields; and to appoint assessors and collectors for the making, apportioning and collecting such taxes; which collectors shall have the same power and authority, in every respect, as the collectors of county

taxes ; which taxes, when collected, shall be paid into the hands of the treasurer, and shall be appropriated by a majority of the proprietors for the common benefit.

SEC. 5. The field committee shall point out and designate the place where, and the proportion which each proprietor shall erect of such common fence, and every proprietor in such common field shall duly erect and maintain his, her or their proportion in such common fence, according to the directions of such committee : *Provided*, Such committee shall attend all orders and comply with all regulations of the major part of the proprietors of such common field, for the improvement thereof for the common benefit, under the penalties of such fines and forfeitures as shall be lawfully annexed to the breach or neglect of such orders or regulations.

SEC. 6. Any person or persons having his, her or their part or proportion of common fence designated by the said field committee, shall have liberty, in order to make or repair the same, of passing over any person's lot or land whatsoever, whenever it shall be necessary for the purpose aforesaid ; and when it shall so happen that the line of fence ordered as aforesaid, for the inclosing or securing any common field, shall run in upon or intersect the fence of any person making a particular inclosure adjoining the common field, the one-half of the division fence between such particular inclosure and the common field as aforesaid, shall be made and maintained by the proprietors of such common field, and the other half by the owner of such particular inclosure ; and if any person or persons, whose land shall adjoin any such common field, shall neglect to keep in repair, and maintain his, her or their part of such fence, after being requested thereto by the field committee, in writing under their hands for the space of ten days, it shall be lawful for the said committee to repair the said fence at the proper charges of the delinquent ; which expense, after being estimated by two reputable freeholders of the town or village wherein such fields are situated, may be recovered by action of debt, before any court having competent jurisdiction, together with costs.

SEC. 7. If any person or persons, whose lands shall adjoin such common field, shall lay open the same, without giving two months' notice thereof in writing, lodged with the clerk of such common field, such person or persons shall be liable to pay all damages that may accrue to the proprietors, or to any of them, of such common fields, to be recovered in any action of damages, before any court having competent jurisdiction.

SEC. 8. All accounts for any services rendered any person acting under the appointment of, or by the direction of the major part of the proprietors of common fields, shall be paid out of the common treasury of such proprietors, after being audited by the field committee, except the accounts of such field committee, which last mentioned accounts shall be audited by a special committee ; and all orders on the treasurer shall be signed by the chairman, and attested by the clerk ; and the collectors shall, for all or any moneys by them paid to the treasurer, demand duplicate receipts, one of which shall be held by the said collectors, and the other lodged with the clerk ; the treasurer shall also demand duplicate receipts for all moneys paid by him, on orders on the treasury, one of which receipts shall be holden by the treasurer, and the other lodged with the clerk.

SEC. 9. The proprietors of common fields shall have power, by their major votes, in lawful meetings assembled, to order all such fines and forfeitures, on either, or any of themselves, as to them shall seem reasonable, for carrying into effect any of their rules and regulations, for the common benefit of the said proprietors : *Provided*, *nevertheless*, That the penalty does not exceed the sum of five dollars, and that the person or persons thinking himself or themselves to be unreasonably or

oppressively fined, shall have the right to appeal from the judgment of said proprietors to the next circuit court holden for said county: *Provided*, That notice of such appeal shall be given within ten days after the judgment be given by the said proprietors.

SEC. 10. The said common field shall be inclosed with a good and sufficient fence, according to law, on or before the first day of May in each and every year, or such other day as the said proprietors may appoint; and no cattle, horses or other animals, shall be suffered to be put into such fields, for the purpose of depasturing therein, between the first day of May and the fifteenth day of November, in each and every year, or on such other day and time as the proprietors may agree upon, under the penalty of paying such fines as shall be ordered by the said proprietors, in lawful meeting assembled.

SEC. 11. For the better ascertaining and regulating of partition fences, it is hereby directed, that when any neighbors shall improve lands adjacent to each other, or when any person shall inclose any land adjoining to another's land already fenced, so that any part of the first person's fence becomes the partition fence between them, in both these cases the charge of such division fence, (so far as inclosed on both sides,) shall be equally borne and maintained by both parties; to which, and other ends in this chapter mentioned, the county commissioners, yearly, and every year in the term next after the month of January, shall nominate, and are hereby required to nominate and appoint three honest, able men, for each township, who being duly sworn to the faithful discharge of the duties of their appointment, shall proceed, at the request of any person or persons feeling him or themselves aggrieved, to view all such fence and fences, about which any difference may happen or arise; and the aforesaid persons, or any two of them, in each township respectively, shall be the sole judges of the charge to be borne by the delinquent, or by both or either party, and of the sufficiency of all fences, whether partition fences or others.

SEC. 12. When they shall judge any fence to be insufficient, they shall give notice thereof to the owners or possessors, and if any one of the owners or possessors, upon request of the other, and due notice given by the said viewers, shall refuse or neglect to make or repair the said fence or fences, or to pay the moiety of the charges of any fence before made, being the division or common fence, within twenty days after notice given, then, upon proof thereof before two justices of the peace of the respective county, it shall be lawful for the said justices to order the person aggrieved and suffering thereby, to make or repair the said fence or fences, who shall be reimbursed his costs and charges from the person so refusing or neglecting to make or repair the partition fence or fences aforesaid, or to order the delinquent to pay the moiety of the charge of the fence before made, being a division or common fence, as the case may be.

SEC. 13. If the delinquent shall neglect or refuse to pay the party injured the moiety of the charge of any fence before made, or to reimburse the costs and charges of making or repairing the said fence or fences, under the order aforesaid, then the same shall be levied upon the delinquent's goods and chattels, under warrant from a justice of the peace, by distress and sale thereof, the overplus, if any, to be returned to the said delinquent.

SEC. 14. But nothing herein contained shall be intended to prevent or debar any person or persons from inclosing his or their grounds, in any manner they please, with sufficient walls or fences of timber, other than those heretofore mentioned, or

by dikes, hedges and ditches, all such walls and fences to be in height at least five feet from the ground; and all dikes to be at least three feet in height from the bottom of the ditch, and planted and set with thorn and other quickset, so that such inclosures shall fully answer and secure the several purposes meant to be answered and secured by this law: *Provided*, That such walls or fences of timber, other than those heretofore mentioned, and dikes, hedges and ditches, shall be subject to all provisions, inspections and restrictions, to which by this chapter, any other inclosure or fence is made liable, according to the true intent and meaning hereof.

SEC. 15. If any horse, mare, gelding, colt, mule or ass, sheep, lamb, goat, kid, bull, cow, heifer, steer or calf, or any hog, shoat or pig, shall break into any person's inclosure, the fence being good and sufficient, the owner of such animal or animals, shall be liable in an action of trespass, to make good all damages to the owner or occupier of the inclosure, for the first offence single damages only, and ever afterwards double the damages sustained.

SEC. 16. The condition of the fence at the time the trespass was committed, may be proven upon trial, and on complaint made by the party injured before any justice of the peace of the county wherein such trespass shall be made, such justice is hereby authorized and required to issue a summons without delay, to three respectable householders of the neighborhood, noways related to either of the parties, nor interested concerning the trespass, reciting the complaint and requiring them to view the fence where the trespass is complained of, and their testimony in such case, shall be good evidence touching the sufficiency of the fence.

SEC. 17. If any person injured for want of such sufficient fence, shall hurt, wound, kill, lame or destroy, or shall cause to be hurt, wounded, killed, lamed or destroyed, by shooting, hunting with dogs or otherwise, any of the aforesaid animals, he or she so offending, shall satisfy or pay the owner of the same, the damages with costs, recoverable as aforesaid: *Provided*, That if the party liable to damages as aforesaid, in either case, will abide and pay what may be deemed reasonable by three neighbors, indifferently chosen to assess the same, it shall be a bar against such suit.

SEC. 18. All animals trespassing, the owners of the same (if known) shall be notified thereof, and if they shall refuse to secure the said animals and prevent their trespassing, the persons on whom the trespass was committed, shall be authorized to secure the same, supplying the aforesaid animals with provender and water, for which they shall receive a compensation from said owner: *Provided*, That if said animals shall receive any abuse or damage from said persons, they shall be barred from any compensation for the aforesaid services.

SEC. 19. When any person or persons may, by mistake, erect and make a fence or inclosure on the land of another person, then, and in that case, when the line or lines are legally run by the proper authority, and the fence and inclosures are known to be on the land of such other person, the person or persons making such fence or fences as aforesaid, through mistake, shall be empowered and authorized by this chapter to enter into the said land of another, doing as little damage as possible, and take away the rails, posts, wood and stones of which said fence or fences are made and erected, within one year from the time said line or lines may be legally run.

SEC. 20. The owner or owners of any land whereon a fence or fences may have been made by mistake, shall not throw down, nor in any manner disturb the said fence or fences for one year from the time such mistake is found out.

SEC. 21. When either the owner of the rails, or the owner of the land is desirous of having the line or lines run, dividing such land, then, in that case, the person wishing such survey, shall give the other person notice in writing, ten days before such survey is made, of the time and place of making such survey.

APPROVED: March 3, 1845.

CHAPTER LII.

INSOLVENT DEBTORS.

SECTION

1. Debtor refusing to surrender property may be proceeded against by *ca. sa.*
2. Court of probate may hear applications for discharge.
3. Duty of officer to take prisoner before court of probate.
4. Duty of probate justice; property to be given up; form of oath to be taken.
5. Creditor may resist application; trial may be had.
6. Examination may be adjourned.
7. Assignee to be appointed; property of debtor to be assigned to him.
8. Debtor to be then discharged.
9. Creditor aggrieved, may appeal to circuit court, on giving bond.
10. If probate justice refuse to discharge the applicant, he may appeal, on giving bond.
11. Property not to be sold by assignee, unless perishable.
12. Circuit court may try and dispose of case.

SECTION

13. Question of fraud to be tried in probate court by a jury of seven householders.
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17. Power of assignee to sell lands; effect of such conveyances.
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SECTION 1. Whenever any debtor shall refuse to surrender his or her estate, lands, tenements, goods or chattels, for the satisfaction of any execution which may be issued against the property of any such debtor, it shall and may be lawful for the plaintiff in such execution, or his or her attorney or agent, to make affidavit of such fact before any justice of the peace of the county; and upon filing such affidavit with the clerk of the court from which the execution issued, or with the justice of the peace who issued such execution, it shall be lawful for such clerk or justice of the peace, as the case may be, to issue a *ca. sa.* against the body of such defendant in execution.

SEC. 2. The courts of probate, in the several counties in this State, shall have the sole power, in the first instance, to hear and determine all applications for discharge from imprisonment for debt under this chapter.

SEC. 3. When any person shall be arrested for debt on execution, or on original process, for the purpose of being held to bail, and shall be desirous of releasing his or her body from such arrest or imprisonment, by delivering up his or her property, it shall be the duty of the sheriff, or other officer having the custody of such debtor, to convey him or her before the judge of probate of the county in which such arrest is made.

SEC. 4. It shall be the duty of the probate justice of the peace before whom any such debtor shall be brought as aforesaid, to require of such debtor a full, fair and complete schedule of all his or her estate, real or personal, including money, notes, bonds, bills, obligations and contracts for money or property of any and every description or kind, name or nature whatsoever, together with a true and perfect account of all the debts which he or she shall or may be owing at the time; which schedule shall be subscribed by the debtor, who shall also take the following oath or affirmation, to-wit: "I do solemnly swear (or affirm, as the case may be,) that the schedule now delivered, and by me subscribed, contains, to the best of my knowledge and belief, a full, true and perfect account and discovery of all the estate, lands, tenements, hereditaments, goods, chattels and effects unto me in anywise belonging, and such debts as are unto me owing, or unto any person or persons for me, or in trust for me, and of all securities and contracts whereby any money may become due or payable, or any advantage or benefit accrue to me or to my use, or to any person or persons for me or in trust for me; that I have not lands, money or any other estate, real or personal, in possession, reversion or remainder, which is not set forth in this schedule; nor have I, at any day or time, directly or indirectly, sold, lessened in value, or otherwise disposed of, all or any part of my lands, money, goods, stock, debts, securities, contracts or estate, whereby to secure the same, or to receive, or expect to receive, any profit or advantage therefrom, to defraud any creditor or creditors, to whom I am indebted in anywise whatsoever; and also, that this schedule contains a true and perfect account of all the debts which I owe to any and every person whatsoever." Which oath or affirmation shall be subscribed by the debtor, and certified by the probate justice of the peace, as may all oaths or affirmations, which it may be necessary for him to administer in the discharge of the duties assigned him by this chapter.

SEC. 5. Any creditor of such debtor shall have the right to appear before the probate justice of the peace, and contest the truth of such schedule; and may for that purpose call such witnesses as he or she shall deem necessary; and the court shall issue subpoenas, and compel the attendance of witnesses, in the same manner as the judges of the circuit courts do in term time.

SEC. 6. The probate justice of the peace shall have power to adjourn or continue the examination of any such debtor to any convenient time, not exceeding thirty days, upon the said debtor giving security for his appearance, and also for the surrender of all the goods, chattels and estate mentioned in his schedule, at the day or time to which such examination may stand continued or adjourned.

SEC. 7. If, after full investigation and fair examination of the debtor and the witnesses, if any, it shall appear to the probate justice of the peace that the proceedings on the part of the said debtor are fair, just and honest, it shall be the duty of the court to name some fit person to act as assignee of the said debtor; and such debtor shall immediately, by indorsement on the back of said schedule, assign all or so much of his property therein mentioned, as will, in the opinion of the court, be sufficient to pay all the debts, interest, costs and charges, in such schedule mentioned, to the person so named as assignee; and such assignment, so made, shall absolutely vest in such assignee, all the interest of such debtor in and to the said estate so assigned for the use of the creditor or creditors of such debtor.

SEC. 8. Whenever the said debtor shall produce to the court a receipt of the assignee of such debtor, certifying that he has received all the estate, property, goods, chattels and effects so assigned to him, then it shall be the duty of the court

to give to such debtor a discharge, in writing, from imprisonment; and the officer having the custody of the said debtor, shall, on the production of such discharge, forthwith liberate such debtor from arrest or imprisonment; and such discharge, from arrest or imprisonment, shall exempt the said debtor from arrest on account of any debt mentioned in said schedule, until the same shall be vacated by due course of law.

SEC. 9. Any creditor thinking himself or herself aggrieved by any such discharge, shall and may be allowed an appeal to the next circuit court to be held in the county, upon his or her giving bond, with security, to prosecute the said appeal at the next circuit court, and to pay all costs and damages which may accrue to the party seeking such discharge; which bond shall be made payable to the probate justice or his successor in office, as shall all other bonds which may be given by authority of this chapter; and the said bond shall be filed with the probate justice.

SEC. 10. Upon application of any debtor for a discharge from imprisonment under this chapter, and refusal of the court to make an assignee, or to grant a discharge from imprisonment, the said applicant shall be allowed to appeal to the next circuit court to be held in said county, upon said applicant's entering into bond with security, in such sum as the court shall require, to appear on the first day of the next term of the circuit court, and abide the decision thereof; and also, that he or she will not sell or dispose of, or remove or lessen in value, any or all of the estate or property mentioned in the schedule of such applicant, but that the same shall be forthcoming, and subject to the order of the said court; and upon such debtor entering into such bond, it shall be the duty of the said probate justice to certify the whole of the proceedings which have been had before him, to the said circuit court, on the first day of the term thereof. All appeals shall be prayed before the probate justice of the peace at the time of trial, or within ten days thereafter.

SEC. 11. No assignee shall sell any property assigned to him by any debtor as aforesaid, during the pendency of any appeal to the circuit court, unless the same be of a perishable nature, and such as will be materially injured in its value by delay.

SEC. 12. The circuit court, at the term to which the proceedings shall be returned, shall (unless for good cause) proceed to hear and determine the matter, and shall impanel a jury to find the facts, at the request of either party, admitting all necessary evidence; and shall make such order therein as justice and equity may require, affirming or reversing the whole or any part of the proceedings of the probate justice, and doing all things that may be necessary to effect the objects of this chapter.

SEC. 13. In every case, where a debtor is arrested on affidavit, charging such debtor with fraud, and being desirous of releasing his or her body from arrest or imprisonment, it shall be the duty of the sheriff, or other officer having the custody of such debtor, forthwith to convey him or her before the probate justice of the peace of the county, whose duty it shall be to issue a *venire* to the sheriff or other officer having custody of such debtor, commanding him forthwith to summon seven reputable householders of the neighborhood, to assemble before the said court as a jury, who shall be sworn to try the fact of fraud with which such debtor shall stand charged.

SEC. 14. If, after full hearing of the parties, the jury shall find a verdict of "guilty of fraud," against such debtor, he or she shall be imprisoned until he or she shall comply with the requisitions of the fourth section of this chapter: but if the jury find such debtor "not guilty of fraud," then the maker of such affidavit,

as aforesaid, shall pay all such costs as may have accrued in consequence of such arrest or imprisonment, and the debtor shall be discharged from such arrest or imprisonment: *Provided, always,* That either party shall have the right to an appeal upon the same conditions as in other cases under this chapter.

SEC. 15. Every debtor arrested on any civil suit or process, shall, upon going before the probate justice of the peace if he shall desire the same, be allowed a jury of seven householders of the neighborhood, who shall be sworn to try the fact of refusal to surrender the property of such debtor for the benefit of his or her creditor; and if the jury return or find a verdict of "guilty of such refusal," then such debtor shall be compelled to surrender his or her property, or schedule his or her property as provided in the fourth section of this chapter; but if the jury find such debtor "not guilty" of refusing to surrender, then such debtor shall be forthwith discharged.

SEC. 16. Every assignee, appointed by authority of this chapter, shall, within the space of thirty days after the assignment of the property mentioned in the schedule or inventory of any insolvent debtor, advertise all the personal property, goods or chattels, mentioned in such schedule, at the door of the court house, and in three other public places in the county, giving twenty days' notice of the time and place of such sale; at which time and place such assignee shall proceed to sell all such personal property, goods and chattels, for the highest price which can be obtained, on a credit of nine months, for which he shall take bond, with sufficient security; and the said assignee shall also advertise at the same places, as above required for personal property, the lands and tenements contained in such schedule, which shall be sold at the door of the court house, on the first day of the circuit court next to be holden in the said county, between the hours of eleven in the morning, and sun setting of the said day; but if the said circuit court should not sit on such day so appointed for its sitting, then such lands and tenements shall be sold in the same manner as if said court had been held at the time appointed, to the highest bidder, on a credit of twelve months, the said assignee taking bond, with sufficient security, for the payment of the same.

SEC. 17. It shall be the duty of every assignee, who shall sell any lands or tenements, by or under authority of this chapter, upon payment of the purchase money being made by the purchaser, to make and execute to such purchaser, his heirs, executors, administrators or assigns, a deed of conveyance for the same, which shall be acknowledged in the same manner as deeds are acknowledged by sheriffs, and such deed shall vest in the purchaser, all the rights of the assignor, to such lands and tenements.

SEC. 18. It shall be the duty of every assignee of any insolvent debtor, within eighteen months after such assignment, to make a settlement of the estate of such insolvent debtor before the court of probate, giving thirty days' public notice of the time of making such settlement; and the probate justice shall make such order concerning the distribution thereof, as is made in cases of insolvency of deceased persons; and such assignee shall pay the creditors of such insolvent debtor, the amount of their several dividends, within thirty days after such settlement; and if the whole amount of debts shall not have been collected at the time of making such settlement, then such assignee shall continue to collect such outstanding debts, and, from time to time, make dividends of such sums as shall come to his possession, until the whole is collected and paid, first deducting such charges and fees as are by law allowed; and if any thing shall remain in the hands of any such assignee, after paying all such debts as are mentioned in such schedule, together with the

cost thereon, then such assignee shall pay over the same to the said debtor, his or her heirs, executors, administrators or assigns.

SEC. 19. Any person being the head of a family and residing with the same, who shall apply to a court of probate for a discharge from his debts, under the provisions of this chapter, shall be allowed the same amount of property as is exempt from execution, which shall be assigned and set apart to him by the probate justice.

SEC. 20. The probate justice of the peace is hereby authorized to allow every assignee, who shall be appointed under the provisions of this chapter, such compensation as shall be reasonable and just for the services which he shall be necessarily called upon to perform, in the discharge of his duties as assignee.

SEC. 21. The probate justice of the peace shall be allowed the same fees for services rendered by authority of this chapter, as he is allowed for similar services in the court of probate, in addition to the sum of two dollars for the examination of each applicant for a discharge under this chapter, and one dollar for each discharge by him granted to such debtor as aforesaid.

SEC. 22. In case of the insolvency of any probate justice of the peace within this State, the same proceedings shall be had against him, before any county commissioner of the county, as are prescribed for other debtors by this chapter.

SEC. 23. Any debtor who shall be convicted of taking a false oath, under any of the provisions of this chapter, shall be deemed guilty of wilful perjury, and shall suffer the pains and penalties imposed by law therefor.

SEC. 24. Any debtor, who shall obtain a discharge under this chapter, and who shall have acted honestly and without fraud, shall forever after be discharged from imprisonment, on account of any debt or debts that he may owe at the time of obtaining such discharge, and that may be contained in the schedule required to be made by this chapter; and the certificate of the probate justice, of such discharge, shall protect such debtor from imprisonment, in all cases where any action may be brought against him for any such debt or debts as aforesaid.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Act No. 2.]

CHAPTER LIII.

INSPECTIONS.

SECTION

1. Warehouses may be kept in each county.
2. Standard weighing scales to be kept.
3. Inspectors; their duties, &c.
4. Further duties.
5. Rates of charges for inspection.
6. Hogsheads of tobacco, weight of.
7. Shall be recorded in books to be kept by inspectors.
8. Inspectors to be sworn.
9. Inspectors to give certificate to owners.
10. Tobacco warehouses; persons applying may erect, on giving bond.
11. Inspector, how appointed; duty of; vacancies, how filled.

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12. Bond required; its conditions; proceedings in case of breach; oath; penalty.
13. Duty of inspector; penalty for neglect of.
14. Book to be kept; entries therein; inspection and weighing of tobacco; form of receipt.
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16. Fees, &c.; inspector's report.
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20. If receipts be lost, how supplied.

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21. Entries of marks, &c., by inspector.
22. What tobacco considered lawful; what unlawful.
23. Tobacco, how delivered on owner's order.
24. Bribery of inspectors, how punished.
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27. Commissioners of warehouses, how appointed; their duties; compensation.
28. Inspectors to be exempt from military duty.
29. Penalties, how recovered.
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SECTION 1. Public warehouses may be kept at the several places which may be pointed out by the commissioners in each county, for an inspection of beef, pork, hemp, flour, tobacco, and all other articles of exportation necessary to be inspected.

SEC. 2. There shall be kept at the several warehouses that may be established, a good and sufficient pair of scales, sufficient to weigh eighteen hundred, at least, and a set of small weights, such as ought to be, according to the standard weight of the county, and that the proprietors of each warehouse provide the same.

SEC. 3. All beef, tobacco, hemp and flour, brought to any of the public warehouses, shall be viewed, inspected and examined, by two persons thereunto appointed by the county commissioners in each county; and it shall be the duty of the commissioners aforesaid, to appoint such inspectors, when in their opinion it may be thought necessary; and it shall be the duty of the aforesaid county commissioners to nominate three fit persons for inspectors at each of the several warehouses within their respective counties; the two first in the nomination shall be considered as the acting inspectors for the ensuing year; or in case of sickness, death or inability in either of the two first inspectors, the third shall be called in to decide on such articles subject to inspection; and the said commissioners shall have power, on complaint in writing being lodged in the office of the clerk of the county, at their first term after such notice to them given, to summon the inspector or inspectors before them, as the case may be, and as the county commissioners shall judge just; and said commissioners shall fill all vacancies which may happen at any time during the remainder of the year. Every such inspector, so appointed by virtue of this chapter, before he enters into the execution of his office, shall give bond with approved security, in the penal sum of two hundred dollars, payable to the Governor or his successors in office, conditioned for the true and faithful performance of his duty according to the conditions of this chapter; which said sum shall be recovered by action of debt before the circuit court, for any wilful or flagrant breach of duty; which bond shall be given and entered into before the county commissioners' court, and lodged in the clerk's office of the county.

SEC. 4. All inspectors to be appointed by virtue of this chapter, shall attend at the different warehouses for which they are appointed, on the application of any person who wishes to have his beef, pork, flour, hemp or tobacco inspected, Sundays excepted; and every inspector neglecting to attend as aforesaid, shall forfeit and pay to the person aggrieved, five dollars, to be recovered before any justice of the peace in the proper county. And the said inspectors shall inspect every article that comes within the purview of this chapter, in such a manner, that they may be fully satisfied, that each article so inspected shall completely answer in quality to the mark or brand by them made, which shall be marked on the barrel or hogshead, if flour, the letters S. F., for superfine, and the letter F., for fine, with the gross weight and net weight marked in figures on the said barrel: if tobacco, or pork, or beef, the weight in gross and net, marked on the head of said hogshead or barrel.

SEC. 5. The rate of inspection and storage of the several articles so inspected, shall be fixed by the several county commissioners at their first or second courts in every year.

SEC. 6. Each hogshead of tobacco shall weigh not less than nine hundred and fifty weight, or exceed eighteen hundred, net: and the barrel of flour shall weigh one hundred and ninety-six pounds, net weight; each barrel of pork and beef shall weigh not less than two hundred pounds net weight each.

SEC. 7. It shall be the duty of the several inspectors, to enter in a book by them kept for that purpose, the mark, number and weight of the several hogsheads and barrels, by them inspected, together with the name of the inspector and warehouse where each inspection was had.

SEC. 8. Each and every inspector appointed by virtue of this chapter, before they enter on the duties of their respective offices, shall be sworn before the clerk of the commissioners' court, by which they were appointed, that they will faithfully discharge the duties of their office, without favor, partiality or affection.

SEC. 9. It shall be the duty of the several inspectors to furnish the owner or proprietor of any of the above mentioned articles, with a certificate, the mark, number and weight of the several articles by them inspected.

SEC. 10. It shall be the duty of the county commissioners' courts in the several counties within this State, from time to time, to authorize the erection of warehouses for the reception and inspection of tobacco, at such places within their respective counties as they may deem necessary and proper. And they shall, moreover, require the person or persons who shall apply for permission to erect the same, to give bond, with sufficient security, in a reasonable penalty, payable to the county commissioners of said county or their successors in office, for the benefit of the county, with condition to erect such strong and substantial house or houses, as will contain at least one hundred hogsheads of tobacco, and as many more as the said county commissioners may think necessary, and also to keep the same in repair as long as it shall continue a public warehouse.

SEC. 11. All tobacco which shall be brought to any of the warehouses, established as hereinbefore directed, shall be received, inspected and examined by one person, to be thereunto appointed, who shall be called *Inspector*, and who shall be appointed in the following manner, to-wit: The county commissioners of the several counties wherein any warehouse or warehouses shall be established according to the provisions of this chapter, shall, and they are hereby authorized and required, once in every year, at the first term of their courts, or at the next succeeding term, to appoint a person of honest character, and reputed to be skillful in tobacco, as inspector for each and every warehouse within their respective counties: and in case of death, resignation or removal of any person so appointed, the said county commissioners shall, at the next succeeding term, upon notice of such death, resignation or removal, appoint a person, qualified as aforesaid, to act as inspector for that inspection, where the vacancy shall have occurred, until the next regular appointment of inspectors, and every inspector shall continue in office until a successor is appointed: *Provided*, That the county commissioners' court may, if they deem it necessary, appoint one additional inspector to each and every public warehouse within the county.

SEC. 22. Every person who shall be appointed inspector by virtue of this chapter, shall, before he enters upon the duties of his office, give bond, with sufficient security, in the penalty of not less than one thousand dollars, at the dis-

cretion of the county commissioners' court, payable to the said county commissioners, or to their successors in office, for the benefit of the county, with condition for the true and faithful performance of his duty while he continues inspector according to the provisions of this chapter; which bond shall be filed in the clerk's office of the county commissioners' court, and the county treasurer shall commence suit for the recovery of the above penalty, against every inspector failing to discharge the duties of his office, agreeably to the provisions of this chapter, before any tribunal having jurisdiction thereof, within two months after notice of such failure, under the penalty of five hundred dollars. And every inspector shall also take the following oath or affirmation, in open court, at the time he executes his bond, to-wit: "You do solemnly swear, (or affirm, as the case may be,) that you will diligently and carefully view and examine all tobacco brought to the warehouse, whereof you are appointed inspector, and that you will not receive or pass any tobacco which is not in your opinion sound, well conditioned, merchantable and free from trash; and that in classing the same, you will, according to your best skill and judgment, make a true and correct discrimination between the first and second qualities; and that you will not receive, pass or stamp any hogshead or cask of tobacco, contrary to the true intent and meaning of the laws in such case made and provided, nor refuse any tobacco that in your judgment is sound, well conditioned and merchantable, and free from trash; and that you will not change, alter or give out any tobacco, other than such hogsheads or casks, for which the receipt to be taken was given, but that you will in all things well and faithfully discharge your duty in the office of inspector, according to the best of your skill and judgment, and according to law, without fear, favor or affection, malice or partiality: So help you God." And if any person shall presume to execute his office of inspector, before he shall have given such bond and taken such oath aforesaid, he shall forfeit and pay five hundred dollars for the use of the county.

SEC. 13. The inspectors of tobacco shall attend at their respective warehouses whenever called on, (Sundays and sickness excepted,) by any shipper or raiser of tobacco, to deliver out for exportation such tobacco as remains in the warehouse, and to inspect any tobacco brought to said warehouse; and every inspector neglecting to attend when requested, as aforesaid, shall forfeit and pay to the party aggrieved, fifty dollars for every neglect, or be liable to an action on the case, at the suit of the party aggrieved, to recover all such damages as he or they shall have sustained by any such neglect.

SEC. 14. That all persons having tobacco at a public warehouse, may have equal justice, the inspector shall enter in a book, to be kept for that purpose, the marks and owners' names of all tobacco brought to their respective warehouses for inspection, in the order in which the same shall be brought in; and such inspector shall view and inspect the same, in due time, as it shall be entered in such book, without favor or partiality, and shall uncase and break, in not less than two places, every hogshead or cask of tobacco brought in to be inspected as aforesaid: and if he shall find the same to be good, well conditioned, merchantable and free from trash, he shall then determine whether such tobacco is of the first or second quality, shall weigh the same in scales, with weights of the lawful standard, and shall stamp or mark with a scoring iron, the hogshead or cask, with the name of the owner and of the person by whom raised, (if known,) the name of the warehouse at which inspected, and also the tare of the hogshead or cask, the quantity of net tobacco therein contained, and whether the same is of first or second quality: he shall also

issue a receipt for each hogshead of tobacco he shall pass, if requested by the owner, which receipt shall be in the following form, to-wit: "At _____ warehouse, county of _____, this _____ day of _____, received of _____, _____ hogsheads of leaf or stemmed (as the case may be) tobacco, of the first or second quality, (as the case may be,) number, mark and weight, as follows:

<i>Number.</i>	<i>Marks.</i>	<i>Gross.</i>	<i>Tare.</i>	<i>Net.</i>
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to be delivered to the said _____ or order for exportation, when demanded.

Witness my hand: _____."

And no inspector shall presume to issue, under any pretence whatsoever, a receipt for tobacco, other than such as shall be printed or written in a plain hand, and according to the above form, under the penalty of one hundred dollars, recoverable by any person who will sue for the same.

SEC. 15. When any tobacco shall be refused by the inspector, the proprietor thereof shall be at liberty to separate the good from the bad for re-inspection, but if he refuse so to do, then it shall be the duty of the said inspector to weigh, prize and cooper up the same, and mark the gross weight on each cask, and take care of and deliver the same to the owner, for which the inspector shall receive one dollar for every hogshead so delivered, in addition to the inspection fees hereinafter mentioned: And for the prevention of fraud, the inspector shall grant a manifest or certificate for each hogshead of tobacco so refused, coopered and delivered, specifying the weight of the same, and that the same had been inspected and refused: and if any person shall sell refused tobacco, or manufacture the same without such manifest, he shall forfeit and pay the sum of fifty dollars for every hogshead so sold or manufactured, one-half to the person suing for the same, and the residue for the benefit of the county in which the offence shall be committed: but it shall be lawful for any person having a hogshead of tobacco refused, to carry the same, with the manifest, to any other warehouse, and the inspector thereat, upon viewing the tobacco, if he esteem it of good quality, first destroying the manifest, he may grant a receipt, as is herein before directed, or shall grant another manifest, (for which one dollar shall be paid,) expressing the review, and that it was the second time refused; after which second refusal, the owner shall not be permitted to carry the tobacco to any other warehouse for re-inspection, but may either have the same picked, or sell the same as refused tobacco, accompanying it with the manifest.

SEC. 16. Every hogshead of tobacco inspected at any of the warehouses established by virtue of this chapter, the planter or owner of the same shall pay to the inspector fifty cents, whether the same shall be passed or refused, and pay for every hogshead shipped from any of the warehouses aforesaid, the shipper, or exporter, when he demands the same for exportation, shall pay the inspector the further sum of one dollar, in full for coopering and storage for the first three months, and for each and every month thereafter the same remains in the warehouse, he shall be entitled to twenty-five cents, to be paid when the tobacco is taken away; and the said inspector, out of the money arising from inspection and shipment of tobacco, shall, in the first instance pay to the owner or proprietor of the warehouse, seventy-five cents for every hogshead received thereat, as rent for said warehouse, and shall retain the residue for his own compensation: *Provided*, Such compensation shall in no case exceed two hundred dollars per annum: and whenever the net profits of any warehouse shall exceed the sum necessary for paying the sums aforesaid,

the surplus shall be paid into the county treasury by the said inspector, for the benefit of the county. And every inspector shall, once a year, at the March term of the county commissioners' court of his county, return to the said county commissioners' court a statement of the number of hogsheads of tobacco received at his warehouse during the year, the number passed, and the number refused, and the number delivered for exportation; and shall account to said county commissioners' court for all moneys received by virtue of his office, and all disbursements made; and if any inspector or keeper of a warehouse, shall make a false return, he shall be liable to indictment, and on conviction, shall pay a fine, double the amount so kept back and not accounted for, to go to the use of the county.

SEC. 17. Every inspector shall store away and secure every hogshead of tobacco which he shall have inspected during the day; and shall, in case of negligence, be liable to the action of the proprietor of such tobacco, for all damages accruing thereto, by reason of such negligence.

SEC. 18. When any new inspector shall be appointed at any warehouse, such inspector shall, and he is hereby required to give to the person whom he shall succeed in office, a receipt under his hand, containing the numbers, marks, gross, tare and net weight of all and every hogshead or cask of tobacco, which shall be then remaining at the warehouse at which he is appointed inspector; with the delivery of which hogsheads or casks of tobacco, so remaining, he shall thenceforth be chargeable and liable, but he shall in nowise be accountable for the loss of weight or quality of tobacco, contained in any hogshead or cask, for which receipt was given by him as aforesaid: and if any hogshead or cask of tobacco be hereafter received by any person whomsoever, and delivered out of any warehouse for exportation by the inspector attending the same, such inspector, from the time of such delivery, shall be forever discharged and acquitted from all actions, costs and charges for, or by reason of the tobacco contained in any such hogshead or cask being unsound and unmerchantable, or of less quantity, or of different quality from that specified in the receipt given for the same, any thing herein contained to the contrary notwithstanding.

SEC. 19. Inspectors of tobacco at the several warehouses in this State, shall, immediately on the delivery of every hogshead or cask of tobacco, at the warehouse whereof they are respectively inspectors, give a receipt for such tobacco, if required by the proprietor, or the person bringing the same to the said warehouse, expressing therein that the same is for uninspected tobacco: every inspector refusing so to do shall forfeit and pay to the owner of said tobacco, five dollars: *Provided*, Such delivery is made during the time inspectors are compelled to attend their warehouses.

SEC. 20. If any inspector's receipt shall be casually lost, mislaid or destroyed, the person or persons entitled to receive the tobacco, by virtue of any such receipt, shall make oath before some justice of the peace of the county where the same is payable, to the number and date of such receipt, to whom and where payable, and for what quality of tobacco the same was given, and that such receipt is lost, mislaid or destroyed, and that he, she or they, at the time such receipt was lost, mislaid or destroyed, was lawfully entitled to receive the tobacco therein mentioned; and shall take a certificate thereof from such justice, and shall advertise the loss of such receipt at the court house of the county in which such inspection may be, on the court day, and at the inspection where the tobacco was bought, for four weeks successively, and shall moreover give bond, with sufficient security to indemnify

the inspector from loss by the claim of the person who may thereafter produce the original receipt, within twelve months after the notice given of the loss thereof; whereupon the inspector shall grant a duplicate of the same receipt to the person or persons entitled to receive the tobacco by virtue of the original receipt, and not otherwise; which receipt shall be signed as duplicate: the bond so taken shall be assignable by the inspector taking the same to the person producing the original receipt, who may maintain an action of debt thereupon, and such assignment shall exonerate the inspector from any claim or demand against him, by virtue of the original receipt: *Provided, nevertheless,* That if the principal and security should, at the time of taking such bond, be insufficient, then in that case, the inspector shall be responsible for the value of the tobacco to the person producing such original receipt; and if any person shall be convicted of making a false oath or procuring a false certificate, in the case aforesaid, such person shall suffer as in cases of wilful and corrupt perjury.

SEC. 21. Every inspector shall carefully enter in a book to be kept for that purpose, the marks, numbers, gross, tare and net weight of all tobacco, viewed and stamped by them as hereinbefore directed, and on what vessel or boat, the same shall have been shipped; and shall also, with every vessel or boat load of tobacco, send a list of the numbers, marks, gross, tare and net weight of every hogshead or cask of tobacco then delivered, to be given to the master of the boat or vessel, in which the same shall be shipped.

SEC. 22. All stemmed tobacco not laid straight, whether the same shall be packed loose or in bundles, shall be accounted unlawful tobacco; and no tobacco packed in hogsheads, which exceed fifty-four inches in the length of the stave, or thirty-six inches at the head, within the *crow*, making reasonable allowance for prizing (which allowance shall not exceed two inches above the gauge) in the prizing head, and which shall be bound with eight hoops, shall be passed or received; but the owner of such tobacco, packed in hogsheads or casks of greater dimensions than above expressed, shall be obliged to repack the same in sizable casks, before the same shall be passed or stamped by the inspector; nor shall any hogshead be so passed or stamped, unless the net weight thereof shall be at least eight hundred pounds.

SEC. 23. Any inspector who shall alter, change or deliver out any hogshead of tobacco, other than the one for which the receipt to be taken in was given, shall forfeit and pay one hundred dollars for every hogshead so altered, changed or delivered out; and if any inspector shall fail or refuse to deliver any hogshead of tobacco, when the same shall be demanded for exportation, or shall deliver such tobacco without an order from the owner thereof, he shall, in either case, forfeit to the owner double the value of the tobacco which he shall so refuse to deliver, or deliver wrongfully.

SEC. 24. Any inspector who shall take, accept or receive, directly or indirectly, any gratuity, fee or reward, for any thing so done, in pursuance of this chapter, other than the payments and allowances hereinbefore mentioned and expressed, upon being convicted thereof, shall forfeit and pay the sum of one hundred dollars, to be recovered with costs, to the use of the county wherein the offence shall have committed, and shall, moreover, be removed from office: and if any person shall offer any bribe to any inspector, for any thing by him to be done in pursuance of this chapter, other than the payments and allowances hereinbefore mentioned and expressed, such person so offending, upon being thereof convicted, shall forfeit and

pay one hundred dollars, for the use of the county wherein the offence shall have been committed.

SEC. 25. Any person who shall alter or change the face of a note for passed or refused tobacco, or who shall alter or cause to be altered, the stamps or marks on any hogshead of inspected tobacco, whether passed or refused, shall be deemed guilty of forgery, and punished as in other cases of forgery.

SEC. 26. Any person who shall erect a warehouse in pursuance of this chapter, shall, in addition to the requisitions hereinbefore mentioned, be required to erect a strong and sufficient prize within the same, and also to provide a pair of strong scales, or patent balances, and correct weights, to weigh at least fifteen hundred pounds.

SEC. 27. The county commissioners' courts of counties wherein one or more warehouses shall be erected, shall, at the term whereat the appointment of inspector is made, appoint a discreet householder, of ability and integrity, to act as commissioner of warehouses for one year, whose duty it shall be to see that the warehouses in his county are kept in good repair, that proper scales and weights are provided, kept in repair, examined and compared with the standard weights of the county; once in six months, at least, to visit every warehouse in his county, and see that the tobacco therein is properly stowed away and secured, and that the inspectors diligently discharge their duties; and if he shall discover in any inspector, any negligence or breach of his duty, he shall report the same to the county commissioners' court at the next term thereof; whereupon said inspector shall be proceeded against according to law; and the commissioner so appointed shall be allowed two dollars for every day he shall be necessarily employed in performing the duties prescribed by this chapter, to be paid out of the county treasury: *Provided*, That such compensation shall not exceed thirty dollars in one year.

SEC. 28. The inspectors of tobacco shall be, and they are hereby exempted from militia duty, except in case of actual invasion and insurrection, and also from serving on juries.

SEC. 29. All penalties and forfeitures in this chapter contained, the mode of recovery and application of which are not specially set forth, shall be recovered by action of debt at the suit of the county treasurer, and shall be applied to lessening the county tax.

SEC. 30. If before the erection of a public warehouse in any county, the quantity of tobacco raised or brought therein shall, in the opinion of the county commissioners' court, require the appointment of one or more inspectors, the same shall be appointed, and when appointed may proceed to examine and inspect any tobacco which may be lodged in any private warehouse, and shall pass or refuse the same, and do all other acts that are required by this chapter, in case of inspection in public warehouses, and such inspection shall be to all intents and purposes legal. The owner of such private warehouse shall not suffer any tobacco to be removed after inspection, unless by order of the inspector, who shall have as complete control over the same as if it were stored in a public warehouse, and shall be responsible in the same manner to the owner thereof; and any proprietor or owner of a private warehouse in which tobacco has been inspected and stored, who shall deliver or suffer the same to be removed without an order from the inspector, as aforesaid, shall forfeit double the value of the tobacco so delivered or suffered to be removed, to be recovered by the inspector for the benefit of the owner of such tobacco: *Provided*, That there shall be no tobacco inspected in a private warehouse, where

there is a public one erected in the same county, and prepared for the reception and inspection of tobacco: *Provided, also,* That it shall be lawful for any citizen of this State, who wishes to export tobacco without inspection, to do so, any law to the contrary notwithstanding.

SEC. 31. If the owner of any tobacco, deposited in any warehouse, shall suffer the same to remain there for a longer time than two years, without paying the fees for storage and keeping the same, it shall and may be lawful for the inspector or keeper of the warehouse to advertise the same, either in some newspaper, the nearest printed in the State, or by setting up six advertisements in writing, in the most public places in the county, for six weeks previous, fairly to expose and sell the same for the best price that can be had in cash, and the overplus, if any, after paying all fees and costs, to be returned to the owner, if called for within five years from the day of sale; if not called for, the same to go to the county: and if any person shall suffer any property other than tobacco to remain in any warehouse established under this chapter, or any public or private warehouse now established, or which may hereafter be established, for a longer term of time than fifteen months from the time of depositing the same, without paying the fees for storage, the keeper or inspector may, in like manner advertise and sell the same, for what the same will bring in cash; and the surplus, if any, to be paid over to the owner or county as above stated.

APPROVED: March 3, 1845.

CHAPTER LIV.

INTEREST.

SECTION

1. Interest fixed at six per cent.
2. Interest to be six per cent. on judgments; on balances due on settlement of accounts, and on money withheld.
3. General restriction.
4. When pleadings disclose fact that excess has been taken, defendant may recover costs, and plaintiff shall forfeit three-fold the illegal interest taken; penalty, how disposed of.

SECTION

5. Further provisions and penalties.
6. Persons paying usury, may recover three-fold, if suit be brought within two years.
7. Parties may be witnesses in certain cases.
8. Townships, at their annual election for trustees, may vote to take interest on school moneys loaned at a rate of interest from eight to twelve per cent.

SECTION 1. The rate of interest upon the loan or forbearance of any money, goods or things in action, shall continue to be six dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or a shorter time.

SEC. 2. Creditors shall be allowed to receive at the rate of six per centum per annum, for all moneys after they become due on any bond, bill, promissory note or other instrument of writing; on any judgment recovered before any court or magistrate authorized to enter up the same within this State, from the day of signing judgment until the effects be sold, or satisfaction of such judgment be made; likewise, on money lent, on money due on the settlement of accounts from the day of

liquidating accounts between the parties, and ascertaining the balance; on money received to the use of another, and retained without the owner's knowledge, and on money withheld by an unreasonable and vexatious delay of payment.

SEC. 3. No person or corporation shall, directly or indirectly, accept or receive in money, goods, discounts or things in action, or in any other way, any greater sum or greater value, for the loan, forbearance or discount of any money, goods or things in action, than as above described.

SEC. 4. Whenever, in any action brought on any contract or assurance, for the payment of money, or any other thing, it shall appear to the court before which such action shall be tried, by the pleading on the case, and on application of the defendant, that a greater rate of interest shall have been directly or indirectly reserved, discounted or taken, than is allowed by this chapter, the defendant shall recover his full costs, and the plaintiff shall forfeit three-fold the amount of the whole interest reserved, discounted or taken, and shall have judgment and execution for the balance only, which may remain due upon said contract or assurance, after deducting three-fold the amount of said interest, one-third part of which shall be paid to the defendant, and the remaining two-thirds shall be paid into the county treasury of the county in which such suit shall have been instituted.

SEC. 5. If any person or corporation shall, directly or indirectly, contract to accept or receive in money, goods, discounts or things in action, any greater sum or greater value, for the loan, forbearance or discount of any money, goods or things in action, than is prescribed by this chapter, he, she or they shall forfeit and pay to the person suing for the same, three-fold the amount of the whole interest so contracted, to be reserved, discounted or taken: *Provided*, Said suit be not commenced by either of the contracting parties; and if so, then the amount so recovered shall be paid into the county treasury of the county where such suit shall have been instituted.

SEC. 6. Every person, who for any such loan, discount or forbearance, shall pay or deliver any greater sum or value than is above allowed to be received, and his personal representatives may recover in an action against the person who shall have taken or received the same, and his personal representatives three-fold the amount of the money so paid, or value delivered above the rate aforesaid, either by an action of debt in any court having jurisdiction thereof, or by bill in chancery in the circuit court, which court is hereby authorized to try the same: *Provided*, Said action shall be brought, or bill filed within two years from the time when the right thereto accrued.

SEC. 7. In the trial of any action wherein it shall appear by the pleadings, that the fact of usury shall be put in issue, it shall be lawful for the debtor, the creditor being alive, to become a witness, and his testimony shall be received as evidence, and the creditor, if he shall offer his testimony, shall be received as a witness, together with any other legal evidence that may be introduced by either party.

SEC. 8. Any township in this State, having school, college or seminary funds to loan, may hereafter loan the same, at any rate of interest not less than eight per cent., nor more than twelve per cent. per annum; the rate to be fixed by a majority of the legal voters of said townships respectively, who shall, at every election for township trustees, vote the rate of interest at which said fund shall be loaned, until their next election for trustees, any law to the contrary notwithstanding.

APPROVED: March 3, 1845.

CHAPTER LV.

JAILS AND JAILERS.

SECTION

1. Jail to be kept in each county.
2. Sheriff to have custody of; may appoint jailer.
3. Duty of sheriff and jailer to receive and discharge prisoners.
4. Criminals and debtors not to be confined in same room.
5. Person convicted, if able, to pay expense of commitment, and support in jail.
6. When prisoner is unable to support himself, county commissioners' court may make allowance.
7. Sheriff shall permit prisoner, not under conviction for felony, to have drink, food and clothing; grand jury to visit jail, and make report; duty of circuit court to inquire, &c.
8. Food; spirituous liquors, regulation as to.

SECTION

9. Jailer to receive prisoners committed under the authority of the courts of the United States.
10. Duty of jailer in such cases; penalty for neglect of; his compensation for keeping prisoners.
11. When jail is insufficient, duty of sheriff to hire guards, &c.
12. When there is no jail, prisoners to be removed to another county.
13. When prisoner so committed, sheriff to notify judge; further proceedings; penalty, if sheriff or jailer fail to make proper return; how recovered; fees.
14. How expenses paid in criminal suits; how in civil.
15. Sheriff may be imprisoned in his own jail.

SECTION 1. There shall be kept and maintained, in good and sufficient condition and repair, a common jail in each county within this State, at the permanent seat of justice for such county.

SEC. 2. The sheriff of each county in this State shall have the custody, rule, keeping and charge of the jail within the county, and of all prisoners in such jail, and may appoint a jailer under him, and remove him at pleasure, for whose conduct he shall be responsible.

SEC. 3. It shall be the duty of the sheriff and jailer to receive from constables and other officers, and confine in such jail, all persons who shall be apprehended by such constables, or other officers, for offences against this State, or who shall be committed to such jail by any competent authority, until discharged by due course of law.

SEC. 4. It shall not be lawful for any sheriff or jailer, to confine or keep debtors and persons committed for crimes in the same room, but they shall be confined and kept separate and apart from each other.

SEC. 5. Every person who shall be committed to the common jail within any county of this State, by lawful authority, for any crime or misdemeanor, if he or she shall be convicted thereof, shall pay the expenses of arresting and conveying him or her to the said jail, and also of his or her support while in jail, before he or she shall be discharged, and the property of such person shall be subjected to the payment of such expenses from the time of his or her arrest; and all such expenses up to the time of conviction shall be included in the judgment for costs. All expenses incurred for the support of such convicted person after conviction, may be collected by order of the circuit court, from time to time as occasion may require: *Provided, however,* That said court may, in their discretion, refuse to make such order upon being satisfied on the oath of such convicted person, or otherwise, that such convicted person has no property or means of satisfying such expenses for his or her support.

SEC. 6. Whenever any person committed to jail upon any criminal process, under any law of this State, shall declare on oath or affirmation, in writing, that he or she is unable to buy or procure necessary food, the sheriff or jailer shall provide such prisoner with necessary food, for which he shall be allowed a reasonable compensation, to be ascertained by the county commissioners' court, and paid as other county charges. And, if from the inelimity of the season, the sickness of the prisoner or other cause, the sheriff shall be of opinion that additional clothes or bedding are necessary for such prisoner, and such prisoner shall be unable to obtain or procure the same, the said sheriff shall furnish the same, for the use of such prisoner during his confinement; for which he shall be allowed a just compensation, and paid as aforesaid.

SEC. 7. Every sheriff and jailer, and other person or persons, whatsoever, to whose custody or keeping any person or persons shall be committed, by virtue of any writ or process, or for any criminal offence, except on conviction of any felonious offence, shall permit and suffer him, her or them so committed, at his, her or their will and pleasure to send for, and have any cider, ale, beer, victuals or other necessary drink or food, from what place and whom they please, and also to have and use such bedding, linen and other things, as he, she or they shall think fit, without detaining the same, or any part thereof, or enforcing or requiring him, her or them to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her or them in using thereof, or relating thereto. And it shall be the duty of the grand jury, at each term, or a committee to consist of at least three members thereof, to visit the jail of their county, and examine the condition thereof, and inquire into the treatment of the prisoners, and make report thereof to the court. And it is hereby made the especial duty of the circuit court, at each term, to inquire and see that all prisoners, civil and criminal, are humanely treated.

SEC. 8. All persons convicted of any felonious or other high crime, and sentenced to imprisonment for six months or upwards, shall, for the whole term of their imprisonment, be kept upon inferior, but wholesome food. All spirituous liquors are prohibited to such prisoners unless by the direction of some respectable physician.

SEC. 9. It shall be the duty of the keeper of the jail, in every county within this State, to receive into his custody any prisoner or prisoners who may be, from time to time, committed to his charge under the authority of the United States, and to keep safely every such prisoner or prisoners, according to the warrant or precept of such commitment, until he or they shall be discharged by due course of the laws of the United States.

SEC. 10. The keeper of every jail aforesaid, shall be subject to the same pains and penalties, for any neglect or failure of duty herein, as he would be subject to, by the laws of this State, for the like neglect or failure in the case of a prisoner committed under the authority of the said laws: *Provided, always,* That the United States do pay, or cause to be paid, for the use and keeping of such jails, at the rate of fifty cents per month, for each person that shall, under their authority, be committed thereto, and also to the jailer such fees as he would be entitled to for like services rendered, in virtue of the existing laws of this State, during the time such prisoner shall be therein confined; and moreover, do support such of the said prisoners as shall be committed for offences.

SEC. 11. Whenever the sheriff of any county in this State shall be of opinion that the jail of his county is insufficient to secure the prisoners that shall be confined

therein, it shall be his duty to give notice thereof to the county, commissioners' court of such county; and also, whenever any sheriff shall have in his custody any person or persons charged with any capital offence or other high crime against the laws of this State, and the jail of the county shall be insufficient, or if there shall be no jail in his county, he may, by and with the advice and direction of any of the judges of the circuit or supreme court, or of any two justices of the peace of his county, employ a guard sufficient for the guarding and the safe-keeping of such prisoner or prisoners in his own county, the said guard not to exceed, however, in any instance, more than three persons. The expenses of said guard to be audited and paid as other county expenses.

SEC. 12. It shall be lawful for the sheriff of any county in this State, when there shall happen to be no jail, or when the jail of such county shall be insufficient, to commit any person or persons in his custody, either on civil or criminal process, to the nearest jail of some other county, in the same circuit; and it is hereby made the duty of the sheriff or keeper of the jail of said county, to receive such person or persons so committed as aforesaid, and him, her or them, safely keep, subject to the order or orders of the circuit judge for the said circuit.

SEC. 13. It shall be the duty of the sheriff so committing any person or persons as aforesaid, for any criminal offence, forthwith to notify the circuit judge for the circuit where such person or persons, so committed is, or are to be tried, of the committing of such person or persons to the jail of such other county; and transmit at the same time to such circuit judge a copy of the cause of the caption and detention of such person or persons. Whereupon, it shall be the duty of such circuit judge, within fifteen days next preceding the first day of the circuit court of the county, where such person or persons is or are to be tried, to issue a writ or writs of *habeas corpus*, directed to the sheriff or keeper of the jail of the county where such person or persons is or are committed, commanding him or them to have the body or bodies of such person or persons thus committed, together with the day and cause of his or their caption and detention, before the circuit court of the said county for the trial of such offences, on the first day of their next term of the said court; and it shall be the duty of the said sheriff or keeper of the jail to bring or cause to be brought, the said person or persons, thus committed as aforesaid, on the day and at the place mentioned in the said writ. And any sheriff or keeper of the jail as aforesaid, failing or neglecting to make return as aforesaid, and to bring the body or bodies of said person or persons according to the command of the said writ, shall be deemed guilty of a contempt of the said court, and shall be liable to be attached and committed to the jail of the said county, there to remain without bail or mainprize until he shall obey such writ: And shall moreover forfeit to the prisoner or party aggrieved, a sum not exceeding five hundred dollars, to be apportioned according to the nature, aggravations and circumstances of the case, and the injury which the party aggrieved may sustain thereby, to be recovered by the prisoner or party aggrieved, in an action on the case founded upon this statute; and the said sheriff or keeper of the jail, may also, in the direction of the said court, be removed from office, and rendered incapable of holding or executing the same thereafter. The sheriff for committing any prisoner as aforesaid, or for executing any writ of *habeas corpus* under this chapter, shall be entitled to the like fees as are provided by law for similar services.

SEC. 14. In all cases where a person is committed from another county, for a criminal offence under this chapter, such county or the prisoner shall pay the ex-

penses, in the same manner as if the commitment had been in the county where the offence was committed. And in civil suits, the plaintiff or defendant shall pay the expenses in the same manner as if the imprisonment had taken place in the same county where the suit was commenced.

SEC. 15. The sheriff may be imprisoned in the jail in his own county, and for the time that he shall be confined within the walls of the prison, the coroner shall have the custody, rule, keeping and charge of the said jail, and shall by himself and his securities be answerable for the faithful discharge of his duties in that office.

APPROVED: March 3, 1845.

CHAPTER LVI.

JOINT RIGHTS AND OBLIGATIONS.

SECTION

1. Estate of joint tenants, how to pass; who to be tenants in common, in case of death of any party.

SECTION

2. Penalty for injuring property held in joint tenancy.
3. Joint obligations, how construed.

SECTION 1. If partition be not made between joint tenants, the parts of those who die first shall not accrue to the survivor or survivors, but descend or pass by devise, and shall be subject to debts, dower, charges, &c., or transmissible to executors or administrators, and be considered to every intent and purpose, in the same view as if such deceased joint tenants had been tenants in common.

SEC. 2. If any person shall assume and exercise exclusive ownership over, or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint tenancy, tenancy in common or co-parcenary, the party aggrieved shall have his action of trespass or trover, for the injury in the same manner, as he would have if such joint tenancy, tenancy in common, or co-parcenary did not exist.

SEC. 3. All joint obligations and covenants shall hereafter be taken and held to be joint and several obligations and covenants.

APPROVED: March 3, 1845.

CHAPTER LVII.

JUDGMENTS AND EXECUTIONS.

SECTION

1. What property subject to execution; judgment, how long a lien on real estate; *proviso*, that execution be issued in one year, unless party restrained by injunction; term "*real estate*," defined.
2. Death of defendant before issue of execution, not to defeat right of plaintiff in certain cases.
3. Holders of certificates of land subject to provisions hereof.
4. Interest on judgments may be collected.
5. Execution may issue to any county.
6. When judgment is *for tort*, execution may issue against the body.
7. Execution not to issue against heir, &c., unless he be in some default.
8. Execution, when returnable; when execution may bind personal property; duty of sheriff as to time.
9. Plaintiff may elect what property to take; exception.
10. Division of property to be made, in selling, if advantageous.
11. Mode of selling lands prescribed; sheriff, how punished for neglect of duty; sale to be valid.
12. On sale of lands, sheriff to give certificate of sale; to file duplicate; certificate to be evidence.
13. Defendant, his heirs, &c., may redeem in one year from time of sale.
14. Judgment creditor may redeem in fifteen months, by paying ten per cent. interest, and have land sold again on his execution.
15. Redeeming creditor considered as bidder; others may bid; rights of respective creditors.
16. The whole or a part of lands sold may be redeemed.
17. Sheriff's commission; certificate where filed.
18. Certificate assignable by indorsement; purchaser, or holder of certificate entitled to deed if land be not redeemed.
19. Form of deed.
20. In case of assignment of certificate.
21. Deed, what considered evidence of; rights under it.

SECTION

22. Duties of officer selling specifically enjoined.
23. *Scire facias*, mortgage may be foreclosed by; proceedings in such cases; service, appearance, trial, judgment, cost, &c., and their incidents; no other than mortgaged property liable to execution.
24. Lands sold under mortgage may be redeemed in the same manner as lands sold on execution.
25. Secret liens provided against; officer attaching, to file certificate thereof, in recorder's office.
26. Duty of officer; when lien to operate.
27. Duty of recorder to record certificate; fee therefor.
28. Form of sheriff's certificate.
29. Notice of sale to be given.
30. Defendant in execution may retain property levied on, by giving bond.
31. If property not forthcoming, sheriff may levy on property of defendant and his security; no other delivery bond allowed.
32. Necessary wearing apparel of every person exempt from execution.
33. Property of head of family, what exempt from execution.
34. If head of family die, or be absent, family to have same rights, &c.
35. Officer levying on property exempt, subject to penalty.
36. Exception as to executions issued by magistrates.
37. If defendant in execution die after judgment, how plaintiff to proceed.
38. If no property be found, plaintiff may have garnishee process, &c.
39. Defect in proceedings, how cured.
40. Death of plaintiff, proceedings in case of.
41. Lien on property, not discharged by death of creditor.
42. Executors and administrators of deceased plaintiff; may bid off property, to secure claim.
43. "Property law" of January 6, 1843, not disturbed.

SECTION 1. All and singular the goods and chattels, lands, tenements and real estate of every person against whom any judgment has been, or hereafter shall be obtained, in any court of record, either at law or in equity, for any debt, damages, costs, or other sum of money, shall be liable to be sold upon execution to be issued upon such judgment, and the said judgment shall be a lien on such lands, tenements and real estate, from the last day of the term of the court in which the same may be rendered, for the period of seven years; *Provided*, That execution be issued at any time within one year on such judgment, and from and after the said seven years, the same shall cease to be a lien on any real estate, as against *bona fide* purchasers, or subsequent incumbrances by mortgage, judgment or otherwise:

Provided, That in case the party in whose favor any such judgment shall have been entered, shall be restrained by injunction out of chancery, or order of any judge or court, either from issuing execution, or selling thereon, the time which he shall be so restrained shall not be deemed or considered as any part of the said seven years. The term "real estate" in this section shall be construed to include all interest of the defendant or any person to his use, held or claimed by virtue of any deed, bond, covenant or otherwise, for a conveyance, or as mortgagee or mortgagor of lands in fee, for life or for years.

SEC. 2. When any judgment shall have become a lien as aforesaid, and the defendant happen to die before execution shall have been issued thereon, the remedy of the person in whose favor the said judgment shall have been rendered, shall not be delayed or suspended by reason of the non-age of any heir or heirs of such defendant; but no execution shall issue upon such judgment, until the expiration of one year after the death of such defendant; nor shall any previous law of this State, which gives no preference to the claims of a creditor of a deceased debtor, be so construed as to impair or affect the lien of any judgment as aforesaid.

SEC. 3. The legal holder or holders by record, of any certificate of purchase of lands from the United States, shall be deemed to be within the true intent and meaning of this chapter.

SEC. 4. In all executions to be issued upon judgments hereafter to be recovered upon contracts either express or implied, it shall be lawful to direct the collection of interest on the said judgment from the time of recovering the same until paid, at the rate of six per centum per annum.

SEC. 5. It shall be lawful for the party in whose favor any judgment as aforesaid may be obtained, to have execution in the usual form, directed to any county in this State, against the goods, chattels, lands and tenements of such party defendant, or upon his body when the same is authorized by law, provided that no execution shall issue against the body of such debtor, except as is provided in chapter fifty-two of the Revised Statutes.

SEC. 6. Nothing herein shall restrain or prevent any execution from being issued against the body of any defendant, where the judgment shall have been obtained for a *tort* or trespass committed by such defendant.

SEC. 7. No execution shall be issued against the body, or against the goods, chattels, lands and tenements of any heir, executor or administrator, unless such person shall have made his estate liable to the same debt by false pleading or otherwise.

SEC. 8. All executions shall be made returnable ninety days after date, and no writ of execution shall bind the property of the goods and chattels of any person against whom such writ shall be issued, until such writ shall be delivered to the sheriff or other officer, to be executed; and for the better manifestation of the said time, the sheriff or other officer shall, on the receipt of every such writ, indorse upon the back thereof, the hour, day of the month and year, when he received the same.

SEC. 9. The plaintiff in execution, may elect on what property he will have the same levied, except the land on which the defendant resides, and his personal property, which shall be last taken in execution, excepting and reserving, however, to the defendant in execution, such property as is, or may be, by law, exempt from execution.

SEC. 10. When any property, real or personal, shall be taken in execution, if such property be susceptible of division, it shall be sold in such quantities as may be necessary to satisfy such execution and costs.

SEC. 11. No lands or tenements shall be sold by virtue of any execution aforesaid, unless such sale be at public vendue, and between the hours of nine in the morning and the setting of the sun of the same day, nor unless the time and place of holding such sale shall have been previously advertised, for the space of twenty days, by putting up written or printed notices thereof, in at least three of the most public places in the county where the lands may be situated, specifying the name of the plaintiff and defendant in the execution, and in all which notices, the lands or tenements to be sold shall be described with reasonable certainty, by setting forth their number, or by some other appropriate description; and if any sheriff or other officer shall sell any lands or tenements by virtue of any such execution, otherwise than in the manner aforesaid, or without such previous notice, the sheriff, or other officer, so offending, shall, for every such offence, forfeit and pay the sum of fifty dollars, to be recovered with costs of suit, in any court of record in this State, by the person whose lands may have been advertised for sale: *Provided, however,* That no such offence, nor shall any irregularity on the part of the sheriff or other officer having the execution, be deemed to affect the validity of any sale made under it, unless it shall be made to appear that the purchaser had notice of such irregularity.

SEC. 12. Whenever any lands or tenements shall be sold by virtue of any execution, it shall be the duty of the sheriff or other officer, instead of executing a deed for the premises sold, to give to the purchaser or purchasers of such land or tenements a certificate in writing describing the lands or tenements purchased, and the sum paid therefor, or if purchased by the plaintiff in the execution, the amount of his bid, and the time when the purchaser will be entitled to a deed for such lands or tenements, unless the same shall be redeemed, as is provided in this chapter, and such sheriff or other officer shall, within ten days from such sale, file in the office of the recorder of the county, a duplicate of such certificate, signed by him: and such certificate, or a certified copy thereof, shall be taken and deemed evidence of the facts therein contained.

SEC. 13. It shall be lawful for any defendant, his heirs, executors, administrators or grantees, whose lands or tenements shall be sold, by virtue of any execution within twelve months from such sale, to redeem such lands or tenements, by paying to the purchaser thereof, his executors, administrators or assigns, or to the sheriff or other officer who sold the same, for the benefit of such purchaser, the sum of money which may have been paid on the purchase thereof, or the amount given or bid, if purchased by the plaintiff in the execution, together with interest thereon at the rate of ten per centum from the time of such sale, and on such sum being made as aforesaid, the said sale and the certificate thereupon granted shall be null and void.

SEC. 14. After the expiration of twelve months, and at any time before the expiration of fifteen months, from the sale of any lands or tenements under the provisions of the preceding sections hereof, it shall be lawful for any judgment creditor to redeem the same in the manner following: Such judgment creditor shall sue out an execution upon his judgment, and place the same in the hands of the proper officer to execute the same, and thereupon said officer shall indorse upon the back of said execution a levy upon the land or tenements which said judgment creditor

may wish to redeem; and said judgment creditor shall pay to said officer into whose hands he shall have placed his execution as aforesaid, the amount of money for which said premises may have been sold, with ten per centum per annum interest thereon, from the date of such sale for the use of the purchaser thereof, his executors, administrators or assigns, upon payment of which, said officer shall file in the recorder's office of the county in which said lands are situated, a certificate of the redemption thereof by said judgment creditor under said execution, and shall advertise and offer the same for sale under and by virtue of said execution, in the same manner that other lands are required to be advertised and exposed to sale on execution in other cases.

SEC. 15. Any judgment creditor, having so redeemed such lands, shall be considered as having bid at such sale the amount of said redemption money so paid by him, and interest thereon from the date of such redemption to the day of sale; and if no bid greater than said amount shall be offered, the lands shall be struck off and sold to such judgment creditor or creditors, and a deed thereof shall forthwith be executed by such officer to such creditor or creditors, and no other redemption shall be allowed; but if another and higher bid shall be made therefor, and the said lands sold for more than the amount of said redemption money and interest as last aforesaid, the excess over and above the amount of the same shall be applied as a credit on the execution under which the redemption shall have been made, and a certificate of purchase shall be executed to the new purchaser in the manner hereinbefore prescribed, for a deed of said land so sold within sixty days, from the date of such sale, unless the same shall be redeemed in the meantime in the manner herein prescribed by some other judgment creditor; and if said lands shall be redeemed from said second purchaser, the same shall be done in the same manner and upon the same terms, and the officer shall proceed in the same mode to offer the said lands for sale as is hereinbefore required in case of the first redemption; and such lands may be successively redeemed within every period of sixty days, so long as there shall be a judgment creditor disposed to redeem the same, on the terms and in the manner aforesaid; and after the lapse of any period of sixty days without redemption, it shall be the duty of the officer who last sold such lands on the execution under which the same shall have been last redeemed, or his successor in office, to execute a deed for the lands so sold to the last purchaser, in like manner as other deeds for lands sold on execution are made.

SEC. 16. Any judgment creditor or creditors may redeem the whole or any part or portion of the lands or tenements previously sold upon execution: *Provided*, Such redemption shall be made in the like distinct quantities or parcels in which the same were sold.

SEC. 17. No commission upon the amount of the redemption money paid in any case shall be allowed to the officer receiving the same, but the usual commission shall be allowed the officer selling said premises on the excess made over and above the amount of said redemption money and interest; the duplicate copy of the certificate of purchase required in the twelfth section hereof, shall be filed in the office of the recorder of the county in which the lands so sold under execution shall be situated.

SEC. 18. Every certificate which shall be given by any officer to any purchaser under the provisions of this chapter, shall be assignable by indorsement thereon, under the hand of such purchaser or purchasers, his, her or their heirs, executors, administrators or assigns; and every person to whom the same shall be so assigned

shall be entitled to the same benefits therefrom in every respect that the person therein named would have been if the same had not been assigned; and in case the lands mentioned in such certificate shall not be redeemed in pursuance of law, shall be entitled to a deed therefor.

SEC. 19. The deed to be executed by the officer to the purchaser under the provisions of this chapter, shall contain a statement of the judgment upon which the lands therein described were sold, and of the date of the execution, and may be in the following form:

"Whereas, A. B. did at the term of the circuit court for the county of _____ (as the case may be) recover a judgment against C. D., for the sum of _____ and costs of suit, upon which judgment an execution was issued, dated on the _____ day of _____ A. D., 18 _____, directed to _____ to execute, and by virtue of said execution the said _____ levied upon the lands hereinafter described, and the same were struck off and sold to _____ he being the highest and best bidder therefor, and the time and place of the sale thereof having been duly advertised according to law. Now, therefore, know all by this deed, that I, _____ of said county of _____ in consideration of the premises, have granted, bargained and sold, and do hereby convey to the said _____ his (her or their) heirs and assigns, the following described tract or tracts of land, (here describe the lands,) to have and to hold the said described premises with all the appurtenances thereto belonging, to the said _____ his heirs and assigns forever. Witness my hand and seal this _____ day of _____ in the year of our Lord one thousand eight hundred and _____. [L. s.]"

SEC. 20. If the purchaser shall have assigned his certificate of purchase, then there may be inserted after the word "law" in the foregoing form in substance as follows: "And the said _____ having duly assigned his certificate of purchase to," (as the case may be.)

SEC. 21. Any deed so executed shall be evidence that the provisions of the law in relation to sales of lands upon execution were complied with until the contrary shall be shown, and such deed shall be considered as conveying to the grantee therein named, all the title, estate and interest of the defendant or defendants in the execution therein named, in and to the lands thereby conveyed, of whatsoever nature the same may be; but such deed shall not be construed to contain any covenant upon the part of the officer executing the same.

SEC. 22. If such lands or tenements so sold, shall not be redeemed as aforesaid, either by the defendant or by such creditor as aforesaid, within fifteen months from the time of such sale, it shall be the duty of the sheriff or other officer, who sold the same, or his successor in office, or his executors or administrators, to complete such sale, by executing a deed to the purchaser; and if any creditor shall redeem such lands or tenements as aforesaid, it shall be the duty of the sheriff, or other officer, on the expiration of fifteen months from the time of such sale, to execute a deed to such creditor as the original purchaser; and such deeds shall be as valid and effectual in law, as if such creditor had been the original purchaser.

SEC. 23. If default be made in the payment of any sum of money, secured by mortgage on lands and tenements, duly executed and recorded, and if the payment be by instalments, and the last shall have become due, it shall be lawful for the mortgagee, his executors or administrators, to sue out a writ of *scire facias* from the clerk's office of the circuit court of the county in which the said mortgaged premises may be situated, or any part thereof, directed to the sheriff or other proper officer of such county, requiring him to make known to the mortgagor, or if he be

dead, to his heirs, executors or administrators, to show cause if any they have, why judgment should not be rendered for such sum of money as may be due by virtue of said mortgage; and upon the appearance of the party named as a defendant in said writ of *scire facias*, the court may proceed to judgment, as in other cases: but if said *scire facias* be returned *nihil*, or that the defendant is not found, an *alias scire facias* may be issued; and if it be returned as aforesaid, or if the defendant appear and plead, or make default, the court may proceed to give judgment with costs, for such sum as may be due by said mortgagee, or appear to be due by the pleadings, or after the defence, if any be made; and also, that said mortgaged premises be sold to satisfy such judgment, and may award or direct a special writ of *feri facias*, for that purpose, to the county or counties in which said mortgaged premises may be situate, and on which the like proceedings may be had, as in other cases of execution levied upon real estate: *Provided, however*, That the judgment aforesaid shall create no lien on any other lands or tenements than the mortgaged premises, nor shall any other real or personal property of the mortgagor be liable to satisfy the same; but nothing herein contained shall be so construed as to affect any collateral security given by the mortgagor, for the payment of the same sum of money or any part thereof, secured by the mortgage deed.

SEC. 24. In all cases hereafter, where lands shall be sold under and by virtue of any decree of a court of equity, for the sale of mortgaged lands, it shall be lawful for the mortgagor of such lands, his heirs, executors, administrators or grantors to redeem the same in the manner prescribed in this chapter, for the redemption of lands sold by virtue of executions issued upon judgments at common law, and judgment creditors may redeem lands sold under any such decree in the same manner as is prescribed for the redemption of lands, in like manner sold upon executions issued upon judgments at common law.

SEC. 25. When a writ of attachment or a writ of execution is issued from the circuit court of one county, to any sheriff or other officer of another county, and levied upon any real estate in such county, it shall be the duty of the officer making such levy, to make a certificate thereof, and file the same in the recorder's office of the county where such real estate is situated; and until the filing of such certificate, such levy shall not take effect as to creditors or *bona fide* purchasers without notice.

SEC. 26. When a writ of attachment is levied upon any real estate, in any case, it shall be the duty of the officer making the levy, to file a certificate of such fact with the recorder of the county where such land is situated; and from and after the filing of the same, such levy shall take effect as to creditors and *bona fide* purchasers without notice, and not before.

SEC. 27. It shall be the duty of the recorder of the proper county, to file and record the certificates mentioned in the foregoing sections, in a book to be kept for that purpose; for which he shall be entitled to receive the same fees as for recording other papers, to be paid by the plaintiff, in such execution or attachment, and be taxed and collected by the sheriff as other costs.

SEC. 28. Such certificate may be in substance in the following form:

“STATE OF ILLINOIS, }
COUNTY, } ss. I do hereby certify that by virtue of a certain writ
of to me directed, from the circuit court of county, in favor of ,
against dated 184 . I did on this day of 184 , levy upon the
following real estate: (here describe it.) A. B., sheriff of county,
(or coroner as the case may be.)

SEC. 29. No goods or chattels shall be sold by virtue of any execution aforesaid, unless previous notice of such sale shall have been given, for at least ten days successively, by putting up written or printed notices thereof, in three of the most public places in the county where such sale is to be, specifying the time and place where such goods and chattels are to be sold.

SEC. 30. Whenever a sheriff or other officer shall have levied an execution issued out of any court of record upon the personal property of a defendant, or shall be about to make such levy, and the defendant be desirous of retaining the same in his possession, such sheriff shall take a bond from such defendant with security that the property shall be forthcoming or delivered, at such time and place, as shall be named in the condition, and that the same shall not be disposed of nor injured, and a bond so taken shall not be considered void, as taken by color of office.

SEC. 31. Where bonds shall be taken by a sheriff, for the forthcoming and delivery of property, and the defendant or his security shall not return the property named in the said bond conformably to the condition thereof, the officer having such execution, may proceed to execute the same in the same manner as if no levy had been made; and in case the defendant's property, or a sufficiency thereof, can not be found, the officer may proceed to levy on so much of the property of the security in the delivery bond as will make the amount called for in such bond, and the property which may be so taken, may be sold by giving notice thereof as prescribed in section twenty-nine of this chapter, and no future delivery bond shall be allowed.

SEC. 32. The necessary wearing apparel of every person shall be exempt from execution, writ of attachment and distress for rent.

SEC. 33. The following property, when owned by any person being the head of a family and residing with the same, shall be exempt from levy and sale on any execution, writ of attachment, or distress for rent; and such articles of property shall continue so exempt while the family of such person, or any of them, are removing from one place of residence to another in this State, viz: *First*, necessary beds, bedsteads and bedding; the necessary utensils for cooking; necessary household furniture, not exceeding in value fifteen dollars; one pair of cards, two spinning wheels, one weaving loom and appendage; one stove and the necessary pipe therefor, being in use, or put up for ready use, in any house occupied by such family. *Second*, one milch cow and calf, two sheep for each member of the family, and the fleeces taken from the same, or the fleeces of two sheep for each member of a family which may have been purchased by any debtor not owning sheep, and the yarn and cloth that may be manufactured from the same, and sixty dollars' worth of property, suited to his or her condition or occupation in life, to be selected by the debtor. *Third*, necessary provisions and fuel for the use of the family for three months, and necessary food for the stock hereinbefore exempted from sale, or that may be held under the provisions of this chapter.

SEC. 34. Whenever, in any case, the head of a family shall die, desert, or cease to reside with the same, the said family shall be entitled to, and receive all the benefits and privileges which are in this chapter conferred upon the head of a family residing with the same.

SEC. 35. If any officer, by virtue of any execution or other process, or any other person, by any right of distress, shall take or seize any of the articles of property hereinbefore exempted from levy and sale, such officer or person shall be

liable to the party injured for three times the value of the property illegally taken or seized, to be recovered by action of trespass, with costs of suit.

SEC. 36. Nothing contained in this chapter shall apply to judgments rendered and executions issued by justices of the peace, excepting such as relate to executions levied upon personal property.

SEC. 37. Whenever a judgment has been or may hereafter be obtained in any court of record of this State, against any person or persons, who has or shall after the rendition of said judgment, die, it shall be lawful for execution to issue against the lands and tenements of said deceased person or persons, without first reviving the judgment against their heirs or legal representatives: *Provided, however,* The plaintiff or plaintiffs in execution, or his or their attorney, shall give to the executor or administrator, if there be any, of said deceased person or persons, at least three months' notice in writing, of the existence of said judgment before the issuing of execution: *And provided further,* That no execution shall issue until after the expiration of twelve months from the death of such deceased person or persons.

SEC. 38. Whenever a judgment shall be rendered by any court of record, or any justice of the peace, in this State, and an execution against the defendant or defendants in said judgment shall be returned by the proper officer, "no property found," on the affidavit of the plaintiff, or other credible person, being made before the clerk of said court, or justice of the peace, that said defendant or defendants have no property within the knowledge of such affiant, in his or their possession, liable to execution; and that such affiant hath just reason to believe that another person or persons is or are indebted to such defendant or defendants, or hath or have any effects or estate of such defendant or defendants in his or their hands, it shall be lawful for said court, or justice of the peace, to cause the person or persons supposed to be indebted to, or supposed to have any of the effects or estate of the said defendant or defendants, to be summoned forthwith to appear before said court or justice, as a garnishee or garnishees; and said court, or justice of the peace, shall examine and proceed against such garnishee or garnishees, in the same manner as is required by law against garnishees in original attachments.

SEC. 39. No proceedings against a garnishee or garnishees shall be quashed or set aside, or said garnishee or garnishees discharged on account of any insufficiency of the original affidavit or summons, if the plaintiff or plaintiffs, or other credible person, for him, shall cause a legal and sufficient affidavit to be filed, or the summons to be amended in such time and manner as the courts or justices of the peace shall, respectively, in their discretion direct; and in that event, the cause shall proceed as if such proceedings had originally been sufficient.

SEC. 40. The collection of the judgments of courts of record shall not be delayed or hindered by the death of the plaintiff or person in whose name the judgment shall exist; but the executor or administrator, as the case may be, may cause the letters testamentary or of administration to be recorded in the court in which the judgment exists; after which, execution may issue and proceedings be had thereon in the name of the executor or administrator, as such, in the same manner that could or might be done or had, if the judgment exists and remains in the name and in favor of the executors or administrators, in his, her or their capacity as such executor or administrator.

SEC. 41. The lien created by law on property shall not abate or cease by reason of the death of any plaintiff or plaintiffs; but the same shall survive in favor of the

executor or administrator of the testator or intestate, whose duty it shall be to have the judgment enforced in manner aforesaid.

SEC. 42. When it shall be necessary in order to secure the collection of any judgment in favor of any executor or administrator, it shall be the duty of such executor or administrator to bid for and become the purchaser of real estate at sheriff's sale; which real estate so purchased shall be assets in his hands, and may be again sold by him upon the order of the court of probate, and the moneys arising from such sale paid over and accounted for as other moneys in his hands.

SEC. 43. Nothing contained in this chapter shall be construed so as to repeal or affect in anywise, the operation of an act entitled "An act regulating the sale of property on judgments and executions," approved, January 6, 1843.

APPROVED: March 3, 1845.

CHAPTER LVIII.

JURORS.

SECTION

1. Who competent to be jurors; who incompetent.
2. Grand jury, how selected and summoned.
3. Foreman; his duties in swearing witnesses, finding bills, &c.
4. Form of oath of foreman and other grand jurors.
5. On what evidence presentments may be made.
6. Petit jury, how selected and summoned.
7. When court sits two weeks, forty-eight petit jurors to be selected.
8. Duty of clerk in impanneling jury.
9. Sheriff to summon jury and make proper returns; penalty for neglecting.
10. If sufficient jurors do not attend, *talesmen* may be taken.

SECTION

11. Jurors, how punished for non-attendance.
12. In case of sickness, &c., juror may be discharged.
13. Jurors, how summoned for special term of court.
14. County commissioners' court may select jurors for special term.
15. Rotation of service to be observed.
16. Compensation of grand and petit jurors.
17. Compensation of *talesmen*.
18. Clerk to certify service of jurors.
19. Jury fees, how collected, and appropriated.
20. Fees of jurors in cases tried in inferior courts.
21. Fees of jurors on coroner's inquest, and how paid.

SECTION 1. All free white male taxable inhabitants in any of the counties in this State, being natural born citizens of the United States, or naturalized according to the constitution and laws of the United States, and of this State, between the ages of twenty-one and sixty years, not being judges of the supreme or circuit court, county commissioners, judges of probate, clerks of the circuit or county commissioners' court, sheriffs, coroners, postmasters, licensed attorneys, overseers of the high way, or occupiers of mills, ferries, toll-bridges or turnpike roads, being of sound mind and discretion, and not subject to any bodily infirmity, amounting to a disability, shall be considered and deemed as competent persons, (except in cases where legal disabilities may be imposed for the commission of some criminal offence,) to serve on all grand and petit juries, in and for the bodies of their counties respectively.

SEC. 2. It shall be the duty of the county commissioners' court in each of the counties in this State, wherein a circuit court is directed to be holden, at least

twenty days before the sitting of such court, to select twenty three persons, possessing the qualifications aforesaid, and as nearly as may be a proportionate number from each township in their respective counties, and to cause their clerk, within five days thereafter, to issue and deliver to the sheriff, or if there be no sheriff, or he be disqualified, then to the coroner of the county wherein the court is to be held, a summons, commanding him to summon the persons so selected as aforesaid, to appear before the said circuit court, at or before the hour of eleven o'clock, A. M., on the first day of the term thereof, to serve as grand jurors, any sixteen of whom shall be sufficient to constitute a grand jury; which said summons shall be served at least five days before the sitting of the court, either by reading it to the person to be summoned, or by leaving an attested copy thereof at his last usual place of abode.

SEC. 3. After the grand jury is impaneled, it shall be the duty of the court to appoint a foreman, who shall have power to swear or affirm witnesses to testify before them: and whose duty it shall be, when the grand jury, or any twelve of them, find a bill of indictment, to be supported by good and sufficient evidence, to indorse thereon "a true bill;" and when they do not find a bill to be supported by sufficient evidence, to indorse thereon "not a true bill;" and shall in either case, sign his name as foreman, at the foot of said indorsement; and shall also in each case in which a true bill shall be returned into court as aforesaid, note thereon the name or names of the witness or witnesses, upon whose evidence the same shall have been found.

SEC. 4. Before the grand jury shall enter upon the discharge of their duties, the following oath shall be administered to the foreman, to-wit: "You, as foreman of this inquest, do solemnly swear, (or affirm, as the case may be,) that you will diligently inquire into, and true presentment make of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching the present service; you shall present no person through malice, hatred or ill will; nor shall you leave any unrepresented through fear, favor or affection, or for any fee or reward, or for any hope or promise thereof; but in all your presentments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding: So help you God." And the following oath or affirmation shall be administered to the other jurors, to-wit: "The same oath that A. B., your foreman, has just taken before you on his part, you and each of you shall well and truly keep and observe on your respective parts: So help you God."

SEC. 5. No grand jury shall make presentments of their own knowledge, upon the information of a less number than two of their own body, unless the juror giving the information is previously sworn as a witness, in which case, if the evidence shall be deemed sufficient, an indictment may be found thereon, in like manner as upon the evidence of any other witness, who may not be of the jury.

SEC. 6. It shall also be the duty of the county commissioners' court in each of the counties in this State, wherein a circuit court is directed to be held as aforesaid, at least twenty days before the sitting of such court as aforesaid, to select twenty-four persons possessing the qualifications aforesaid, who shall compose and constitute two full petit juries, to serve as such at the next succeeding term of the circuit court, in each county respectively, to be summoned in like manner as is hereinbefore directed in the case of grand juries.

SEC. 7. The county commissioners' courts of the several counties in which the circuit courts are allowed to sit two weeks, are authorized to select forty-eight qualified jurymen, to serve as petit jurors during the term of the circuit court, twenty-four of whom shall be selected to serve during the first week of the court, and summoned to attend on the first day of the term; and twenty-four shall be selected to serve during the second week of the term, and summoned to attend on the second Monday of the term.

SEC. 8. It shall be the duty of the clerk of the circuit court at the commencement of each term, to write the name of each petit juror on a separate ticket, and put the whole into a box or other place for safe keeping; and as often as it shall be necessary to impanel a jury, the clerk, sheriff or coroner shall, in the presence of the court, draw by chance, twelve names out of such box or other place, which shall designate the twelve to be sworn on the jury, and in the same manner for the second jury, in their turn, as the court may, from time to time, order and direct.

SEC. 9. In all cases where any sheriff or other officer shall be commanded to execute any summons as aforesaid, he shall be required to make return thereof on or before the return day to the clerk who may have issued the same, with an indorsement thereon, certifying on whom it has been executed, and the time when; and in default of so doing, such sheriff or other officer shall be considered as guilty of a contempt, and may be fined for the use of the proper county, in any sum not less than ten, nor more than fifty dollars, unless such sheriff or other officer shall seasonably make his excuse, to the satisfaction and acceptance of the court.

SEC. 10. If a sufficient number of grand or petit jurors, when selected and summoned as aforesaid, shall not appear, or if by reason of challenges, or any other cause, there shall not be a sufficient number of qualified persons to make up the pannel, the court may order the sheriff to return without delay, such number of good and lawful men of the county as may be necessary for that purpose; and when the sheriff is interested, or related to either of the parties, the court may direct the coroner, to make such return; and if any circuit court should at any time sit before the county commissioners' court shall have made a selection of grand or petit jurors as aforesaid, or if on any account the whole pannel in either case shall fail to attend, the court may order the sheriff or other officer to summon from the bystanders, being qualified persons as aforesaid, a sufficient number to supply such deficiency, who shall continue to serve for the remainder of the term, unless they shall be sooner discharged by the court.

SEC. 11. Every person who shall fail to attend, when lawfully summoned to appear as a grand or petit juror as aforesaid, without having a reasonable excuse, shall be considered as guilty of a contempt, and shall be fined by the courts respectively, in any sum not less than five nor more than twenty dollars, for the use of the proper county, unless good cause be shown for such default, at or before the next term of such court; and it shall be the duty of the clerk to issue a summons against all such delinquents (where such persons shall not come in without process) to show cause at the next succeeding term of such court, why he or they should not be fined for such contempt; at which, or any subsequent term, the court shall proceed to assess said fine, unless the person or persons so summoned and failing to attend as aforesaid, shall appear and show good cause for such delinquency: *Provided*, That the oath or affirmation of any such delinquent shall at all times be received as competent evidence in his favor.

SEC. 12. In case of the death, sickness or non-attendance of any grand or petit juror after he shall have been sworn upon the jury, or where any such juror as aforesaid, after being sworn as aforesaid, shall, for any reasonable cause, be dismissed or discharged, it shall be lawful for the court to cause others, if necessary, to be summoned and sworn in his or their stead.

SEC. 13. Whenever a failure takes place to hold a regular term of any of the circuit courts of this State, and a special term of said court is called, it shall be the duty of the sheriff to summon, for said special term, the list of grand and petit jurors furnished for the regular term preceding.

SEC. 14. The county commissioners' courts of this State are hereby authorized, at any special term of their courts, to select lists of grand and petit jurors in the manner herein provided, for any special term of the circuit courts in their respective counties.

SEC. 15. It shall be the duty of the county commissioners' court to arrange and select the grand and petit jurors as aforesaid, so that no one person shall serve on the jury a second time, before all fit persons of the county shall have respectively served in rotation, according to the best information that can be obtained.

SEC. 16. There shall be allowed and paid to grand and petit jurors for their services in attending circuit courts of the several counties in this State, the sum of seventy-five cents per day, for every day necessary in attending courts as aforesaid, as such jurors, and for every mile of necessary travel, to be computed from the place of holding courts, to the residence of the juror, five cents per mile, to be paid out of the county treasury, as now provided by law, for the payment of grand and petit jurors.

SEC. 17. Whenever any person shall be summoned as *talesman*, to attend any circuit court as a petit juror and shall be detained as such, longer than one day, such person so summoned shall be allowed mileage from the place of holding courts to the residence of such juror, in the same manner as though such person had been originally selected and summoned. Mileage only to be computed one way.

SEC. 18. The clerk of the circuit court shall furnish to each of the jurors aforesaid, (and without fee,) whenever he shall be discharged from further service by the court at any term thereof, a certificate of the number of days he may have attended at such term, and upon the presentment thereof to the county treasurer, he shall pay to such person the sum above provided for his services.

SEC. 19. A jury fee of three dollars shall be taxed with the costs of each suit, which, with the docket fee provided by law, shall be collected by the clerk of the court, and paid into the county treasury, there to remain and be held as a special fund for the payment of jurors' fees.

SEC. 20. There shall be allowed to each juror in a civil case before a judge of probate, justice of the peace or other than in a circuit court, the sum of twenty-five cents.

SEC. 21. The fee of each juror attending an inquest held over a dead body shall be twenty-five cents, payable out of the county treasury.

APPROVED : March 3, 1845.

CHAPTER LIX.

JUSTICES OF THE PEACE AND CONSTABLES.

SECTION

1. Justices and constables, when and how elected.
2. Number to be elected in each precinct.
3. Term of office.
4. Vacancies, how filled.
5. When additional justices and constables may be elected in certain precincts; their terms.
6. New counties, manner of holding elections in.
7. Jurisdiction of justices and constables.
8. Justices to be commissioned by the Governor; constables, their authority to act.
9. To be sworn.
10. Justices to give bond; its condition; how approved, filed, and to whose use held.
11. Constable to give bond; its condition; to whom payable, and to whose use held.
12. If justice or constable do not take oath and file bond in twenty days, office to be vacant.
13. On the filing of bond of justice, clerk of county commissioners court, shall transmit certificate of election to Governor.
14. By whom oath of office to be administered, and certificate thereof made; record to be kept.
15. Resignations, how made; record thereof kept.
16. If there be no constable in a precinct, any justice may appoint.
17. Cases in which justices have jurisdiction, particularly recited.
18. Jurisdiction extends to cases in which demands have been reduced by credits.
19. Justices, when duly qualified, may collect money.
20. Record of suits to be kept by justice.
21. Suit to commence by summons; form of; day of trial; when summons to be served.
22. Warrant to arrest, may issue on oath of plaintiff; form of; defendant may give bail and be released; condition and form of bail bond; when bail may be exonerated.
23. When cause shall be heard in absence of the defendant.
24. If plaintiff fail to appear, suit to be dismissed.
25. When joint defendants are sued, and all served, how cause to proceed, form and effect of judgment; if debts appear to be different, how to proceed; separate claims, how disposed of.
26. When joint defendants are not all served, what judgment may be given.
27. Continuances, for what causes granted; for what time and on what conditions.
28. When parties appear, trial to proceed; how conducted; judgment; costs; interest.
29. Defendant sued may pay to constable the sum due and be exonerated.
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84. Liability of security; if bond be not given when required, suit to be dismissed.
85. When defendant evades service, how it may be made.
86. Justice may appoint special constable in cases of emergency.
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88. Duty of constable to apprehend offenders, suppress riots, and serve process.
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90. Execution may be against chattels or body of defendant.
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115. Justice failing to deliver books, &c., to his successor, how punished; further liability on official bond.
116. Justice or constable refusing to pay over money, how proceeded against; penalty.
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118. Constable failing to return execution at proper time, liable on official bond; how proceeded against.
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120. On judgment rendered, execution to be issued, but property of sureties not to be taken until that of principal be exhausted.
121. Judgment to be for full penalty of bond, execution to issue for amount due.
122. Execution to be issued on subsequent breaches of bond; defendant to be summoned by *scire facias*.
123. Securities, extent of their liability; liability of principal, not limited.
124. Justices and constables may appeal, &c., as in other cases.

SECTION 1. Justices of the peace and constables shall be chosen on the first Monday of August in each year, in the manner prescribed in the seventh and subsequent sections of chapter thirty-seven, title "elections."

SEC. 2. Two justices of the peace and two constables shall be elected in each election precinct in each county, except that precinct in which the county seat is located, in which there shall be three justices of the peace and three constables elected.

SEC. 3. Justices of the peace and constables shall hold their offices for the term of four years, and until their successors are elected and qualified, except in cases herein specified.

SEC. 4. When a vacancy shall happen in the office of justice of the peace or constable in any precinct, it shall be the duty of the clerk of the county commissioners' court of the county in which the vacancy shall so happen, to issue his order to the judges of election in the district, requiring them on a certain day, not less than twenty days from the date of such order, to hold an election to fill such vacancy, and the said judges shall, at the time appointed in said order, hold an election to fill such vacancy, and conduct the same, and make returns thereof, which shall be opened, examined, abstracts thereof made and transmitted to the secretary's office, as in other cases.

SEC. 5. The county commissioners' court of any county may, when they deem it necessary, cause an election to be held in the precinct in which the county seat is located, for the election of one additional justice of the peace and two constables, who shall hold their offices until the next quadrennial election of justices of the peace and constables, and until others are elected and qualified. At such quadrennial election, the whole number of justices of the peace and constables to which each precinct is herein entitled, shall be elected.

SEC. 6. When a new county shall hereafter be created, it shall be the duty of the court of county commissioners thereof, at their first term, to divide the same into precincts as aforesaid, and appoint judges of election, and a time and place for holding elections therein as aforesaid, and to cause the same to be entered of record; and if, from any cause, the said court shall fail or neglect the duty aforesaid, at their said first term, it shall be their duty to hold a special term for that purpose; and the clerk shall make out copies of such record, and the sheriff shall post up the same, at the places appointed for holding such elections, in each of said precincts; and elections shall be held therein, for justices of the peace, returns thereof made, examined and transmitted, in all respects as provided in this chapter; and justices of the peace so elected, shall continue in office until the next quadrennial election of justices of the peace, and until their successors shall be elected and qualified.

SEC. 7. Justices of the peace and constables, when elected and qualified under this chapter, shall have jurisdiction within their respective counties.

SEC. 8. Justices of the peace shall be commissioned by the Governor, before entering upon their official duties. Constables may act upon their certificates of election, to be granted by the clerk of the county commissioners court.

SEC. 9. Justices of the peace and constables shall, before entering upon the duties of their respective offices, be sworn, faithfully to perform the duties of their respective offices according to law and to the best of their understanding.

SEC. 10. Every justice of the peace, before entering upon the duties of his office, shall execute and deliver to the clerk of the county commissioners' court of his county, and within twenty days after his said election, a bond, to be approved by said clerk, with one or more good and sufficient securities in the sum of not less than five hundred nor more than one thousand dollars; conditioned that he will justly and fairly account for and pay over all moneys that may come to his hands under any judgment or otherwise, by virtue of his said office: and that he will well and truly perform all and every act and duty enjoined on him by the laws of this State, to the best of his skill and abilities. Said bond shall be made payable to the county commissioners of the county in which such justice of the peace shall be elected, and their successors in office, for the use of the people of the State of Illinois, and shall be held for the security and benefit of all suitors and others, who

may be injured or aggrieved by the official acts or misconduct of such justice of the peace.

SEC. 11. Every constable, before he shall enter upon the duties of his office, shall execute and deliver to the clerk of the county commissioners' court of the proper county, a bond to be approved by said clerk, with one or more good and sufficient freeholders as his securities, in the sum of one thousand dollars, conditioned that he will faithfully discharge the duties of his office of constable; and that he will justly and fairly account for, and pay over all moneys that may come to his hands, under any process or otherwise, by virtue of his office; the said bond shall be made payable to the county commissioners of the county in which such constable shall be appointed, and their successors, for the use of the people of the State of Illinois, and shall be held for the security and benefit of all suitors and other persons who may be interested in, or become injured by the official conduct of such constable.

SEC. 12. If any justice of the peace or constable shall not, within twenty days after his election or appointment, take the oath, and give bond as aforesaid, the said justice or constable shall not be permitted after that time to be so qualified, or to take his said office; but the said office shall be considered as vacant, and shall be filled accordingly.

SEC. 13. It shall be the duty of the clerks of the county commissioners' courts of the several counties in this State, upon the execution and filing bond as aforesaid, by any justice of the peace, to make out a certificate of the execution and filing thereof, under the seal of his office, and transmit the same to the Governor of this State, who shall thereupon issue a commission to said justice of the peace.

SEC. 14. The oath of office required to be taken by justices of the peace and constables shall be administered by the clerk of the county commissioners' court of the proper county, who shall certify the same upon the commissions of such justices, and the certificates of election of such constables respectively. The clerk shall keep a book, in which he shall enter the name of every justice of the peace and constable sworn into office, together with the date of his commission or certificate, and the time of his being sworn into office.

SEC. 15. Resignations of the office of justice of the peace and constable shall be made to the clerk of the commissioners' court of the proper county, who shall immediately enter the date of every such resignation in the book above provided for; which book, or a certified copy of an entry in the same, shall be received as evidence in all courts within this State.

SEC. 16. Whenever there shall be no constable in any precinct, any justice of the peace in such precinct may appoint one, who shall be qualified as in other cases, and hold his office until superceded by an election.

SEC. 17. Justices of the peace shall have jurisdiction in their respective counties, to hear and determine all complaints, suits and prosecutions of the following description:

1st. In actions of debt on bonds, contracts, agreements, promissory notes, or other instruments in writing, in which the amount claimed to be due, does not exceed one hundred dollars:

2d. In actions of assumpsit upon any contract or promise, verbal or written, express or implied, for a valuable consideration, in which the amount claimed to be due does not exceed one hundred dollars:

3d. In suits brought for goods, wares or merchandize, sold and delivered; for work and labor done, or services rendered; for money had and received; for money lent; for money received by the defendant, for the use of the plaintiff; or for money paid by the plaintiff for the defendant, at his request; in which the amount claimed to be due does not exceed one hundred dollars:

4th. In suits for money claimed to be due upon unsettled accounts, in which the balance claimed to be due does not exceed one hundred dollars:

5th. In suits for money claimed to be due upon settled accounts between individuals, in which the balance ascertained to be unpaid, shall not exceed one hundred dollars:

6th. In all suits upon contracts or promises for rent, and in cases of distress for rent, upon landlords' warrants, in which the amount claimed to be due does not exceed one hundred dollars:

7th. In actions of debt for trespass, by cutting timber, in which the amount claimed does not exceed one hundred dollars:

8th. In actions for money claimed to be due for specific articles of property, whether claimed to be due by bond, note, or other instrument in writing, or upon a promise, express or implied, in which the value of the property claimed does not exceed one hundred dollars:

9th. For all debts or demands claimed to be due, not exceeding one hundred dollars, in which the action of debt or assumpsit will lie:

10th. In all actions in which an executor or administrator is plaintiff, or for property purchased at an executor's or administrator's sale, where the amount claimed does not exceed one hundred dollars:

11th. In all actions in which an executor or administrator is defendant, where the amount claimed does not exceed twenty dollars:

12th. In all actions of trespass on personal property, and of trover and conversion, in which the damages claimed do not exceed one hundred dollars:

13th. In all cases of assault, assault and battery, and affrays, in which the people are plaintiffs, in which they shall have exclusive original jurisdiction, unless in case of cities or incorporated towns, in which jurisdiction is otherwise conferred by law:

14th. In all actions against sheriffs, coroners and constables, for malfeasance, misfeasance or nonfeasance in office, wherein the amount claimed does not exceed one hundred dollars.

The provisions of this section shall apply as well to proceedings commenced by attachment, as to other cases.

SEC. 18. In all suits provided for in the preceding section, the jurisdiction of the justice shall be deemed to extend to cases in which the original claim, debt, demand or damages may have originally exceeded the sums of one hundred dollars, and twenty dollars respectively, but which shall have been reduced by fair credits below those sums.

SEC. 19. Justices of the peace, who shall have given bond and received commissions under the provisions of this chapter, are authorized and empowered, and it is hereby made their duty to receive money on all notes and demands which may have been placed in their hands for suit or collection, and also upon all judgments rendered by them prior to the issuing execution thereon.

SEC. 20. It shall be the duty of every justice, whenever a suit shall be commenced before him, to record, in a book kept for that purpose, the names of the

parties, the amount and nature of the debt sued for, the date and description of the process issued, and the name of the officer to whom such process shall be delivered, and throughout the whole of the proceedings in any suit, it shall be his duty, whenever any process shall be issued or returned, or any order made, or judgment rendered, to make a written memorandum of the same, in the same book, and to file and safely keep all papers given him in charge.

SEC. 21. Every suit before a justice, except such as are hereinafter provided for, in a different manner, shall be commenced by summons, which shall be in the following form, as nearly as the case will admit, viz :

STATE OF ILLINOIS, } *The People of the State of Illinois, to any Constable of said*
COUNTY, } *County, GREETING:*

You are hereby commanded to summon A. B. to appear before me, at _____ on the _____ day of _____ at _____ o'clock, _____ to answer the complaint of C. D. for a failure to pay him a certain demand not exceeding one hundred dollars; and thereof make due return as the law directs. Given under my hand and seal, this _____ day of _____ 184 .

JOHN DOE, J. P.

In which summons the justice shall specify a certain place, day, and hour for the trial, not less than five, nor more than fifteen days from the date of such summons; at which time and place the defendant is to appear; which process shall be served at least three days before the time of trial mentioned therein, by reading the same to the defendant or defendants.

SEC. 22. If, previous to the commencement of a suit, the plaintiff shall make oath that there is danger that the debt or claim of such plaintiff will be lost, unless the defendant be held to bail, and shall state, under oath, the cause of such danger, so as to satisfy the justice that there is reason to apprehend such loss, the justice shall issue a warrant which shall be in the following form, as nearly as the case will admit, viz :

STATE OF ILLINOIS, } *The People of the State of Illinois, to any Constable of said*
COUNTY, } *County, GREETING:*

You are hereby commanded to take the body of _____ and bring him forthwith before me, unless special bail be entered; and if such bail be entered, you will then command him to appear before me, at _____ on the _____ day of _____ at _____ o'clock, _____ to answer the complaint of A. B. for a failure to pay him a certain demand, not exceeding one hundred dollars; and hereof make due return as the law directs. Given under my hand and seal, this _____ day of _____ 184 .

JOHN DOE, J. P.

And in all cases the defendant shall have a right to release his or her body arrested by virtue of such process, by giving special bail to the constable executing the same, which shall be indorsed on the back of the warrant, in the following form, as nearly as the case will admit, viz :

"I, G. F. acknowledge myself special bail for the within named C. D. Witness my hand, this _____ day of _____ 184 .

G. F."

Which indorsement shall be signed by one or more securities, to be approved by the constable taking the same, and shall have the force and effect of a recognizance

of bail, the condition of which is, that the defendant, if judgment shall be given against him or her, will pay the same with costs, or surrender his or her body in execution; and in default of such payment or surrender, the goods and chattels of the bail shall be liable for the payment of the judgment and costs: *Provided*, That if the body of the defendant shall be rendered in execution by himself or his bail, within thirty days after the issuing of such execution, or if a sufficiency of the defendant's property shall be found to satisfy the judgment and costs, the bail shall be exonerated; but if neither the body of the defendant shall be surrendered, nor a sufficiency of his or her property can be found within the time aforesaid, to pay the judgment and costs, then the justice shall issue execution against the bail, who shall be dealt with in the same manner as if he were defendant.

SEC. 23. If the defendant shall not appear at the time of trial, after giving bail as aforesaid, or after being served with a summons, as described in the twenty-first section of this chapter, and no sufficient reason be assigned to the justice, why he or she does not appear, then the justice shall proceed to hear and determine the cause, in the absence of said defendant, but shall not give judgment in favor of the plaintiff, unless the said plaintiff shall fully prove his demand in the same manner as if the defendant had been present and denied the same.

SEC. 24. If the plaintiff or his agent shall not appear at the time appointed for the trial aforesaid, and no sufficient reason shall be assigned to the justice why such plaintiff or his agent does not appear, the justice shall dismiss the suit, and the plaintiff shall pay the costs, unless the defendant shall consent, that such suit shall be continued to another day, in which case, the same proceedings shall take place at the second day, so fixed for the trial as above provided; but this section shall not require the dismissal of a suit on a note placed in the hands of a justice for collection.

SEC. 25. If two or more persons shall be sued jointly before any justice of the peace, and all of such defendants shall have had notice as aforesaid, by warrant or summons, the appearance of any one of the said defendants, at the time of trial, shall be sufficient to justify the said justice in proceeding as if all were present; and if none of said defendants shall appear after such notice, the justice shall, if the plaintiff's demand be established as aforesaid, proceed as in other cases of default; and in either of the aforesaid cases, the justice shall not divide the amount of the debt proved among the defendants, but shall give one entire judgment for the whole amount proved to be due against so many of the defendants jointly, as shall be proved to be jointly indebted to the plaintiff. But if it shall appear to the justice, that any two or more of the defendants are severally indebted to the plaintiff, upon separate and different debts, or causes of action, or upon several or different promises or contracts, such plaintiff shall not be allowed to bring in such separate claims; nor shall the plaintiff be barred by the determination of his suit against such joint defendants, from prosecuting his suit against the respective defendants, for the recovery of such separate demands.

SEC. 26. Where there are several joint debtors, and all can not be served with process, the justice may render judgment against such as are served with process.

SEC. 27. Previous to the commencement of any trial before a justice of the peace, either party may move to have such trial put off for a time not exceeding ten days, upon making proof, either upon his own oath or that of a credible witness, that the said party can not safely proceed to trial, on account of the absence of a material witness, or on account of any other cause or disability, which would prevent them from obtaining justice at such trial; and if the justice be satisfied that the party so ap-

plying, can not safely proceed to trial; and also that the party so applying has used due diligence to be ready at the time of trial first appointed, and that his not being ready, is not the effect of such party's own neglect or inattention, then the said justice shall order the trial of said cause to be deferred to another day and hour, within ten days, to be by him appointed; and the party praying such continuance, shall pay all the costs occasioned thereby: *Provided*, The justice may at any time, continue any case without oath, if the parties consent, or if but one party be present and shall consent, or if he shall deem it essential to justice so to do, for any good cause shown.

SEC. 28. When the parties shall appear and be ready for trial, the justice shall proceed to hear and examine their respective allegations and proofs, and shall thereon give judgment against the party who shall be proved to be indebted to the other, for so much money in dollars and cents as shall appear to be due, with costs of suit; but if neither party shall appear to be indebted to the other, then the judgment shall be against the plaintiff for the costs of suit only; and if such judgment be rendered upon any note or bond, or for a balance due upon a settled account, the justice shall allow interest from the time when the same became due, and include the same in the said judgment; and in all cases the judgment shall bear interest at the rate of six per cent. per annum until paid.

SEC. 29. The justice shall indorse on the back of every summons or warrant, the sum demanded by the plaintiff, with the costs due thereon, and the defendant may pay the same to the constable in whose hands such process may be, who shall give a receipt therefor, which shall exonerate the defendant from debt and costs.

SEC. 30. All evidence before a justice of the peace shall be under oath, and by parol, except when it shall be necessary to exhibit the signature or hand writing of a party against him, and except such evidence as shall be taken by deposition, as hereinafter mentioned.

SEC. 31. No party to any suit before a justice shall be permitted to deny his or her signature to any written instrument upon which such suit shall be founded, or which shall be offered as a set-off or acquittance for the debt demanded in such suit, unless the said denial be under the oath of the party so denying the signature purporting to be his or her own.

SEC. 32. If any witness, residing within the county wherein a suit shall be pending before a justice, shall be unable to attend, on account of age, sickness or other cause, it shall be lawful for the justice before whom such suit shall be pending, or some other justice of the county, to take the deposition of such witness in writing; and the justice before whom the suit shall be pending, shall adjourn the trial, not more than six days for that purpose, and shall give both parties notice of the time and place of taking such deposition.

SEC. 33. If any witness, whose testimony shall be material in a suit pending before a justice, shall reside out of the county wherein such suit shall be pending, the party desiring it, may take his, her or their deposition or depositions, before any justice of the peace in the county in which such witness or witnesses reside; and the depositions taken in conformity thereto may be given in evidence in said suit, if it shall be made to appear that the opposite party had reasonable notice of the time and place of taking such depositions.

SEC. 34. No party shall be permitted to introduce at the trial, any note, bond, debt or other claim against his adversary, which he shall have acquired after the commencement of the suit.

SEC. 35. In all suits which shall be commenced before a justice of the peace, each party shall bring forward all his or her demands against the other, existing at the time of the commencement of the suit, which are of such a nature as to be consolidated, and which do not exceed one hundred dollars when consolidated into one action or defence; and on refusing or neglecting to do the same, shall forever be debarred from the privilege of suing for any such debt or demand.

SEC. 36. When either party shall require the attendance of a witness, in any suit pending before a justice, it shall be the duty of the justice to issue a subpoena in the following form, as nearly as the case will admit, viz:

STATE OF ILLINOIS, }
COUNTY. } *The People of the State of Illinois, to A. B.*

You are hereby commanded to appear before me at _____ on the _____ day of _____ at _____ o'clock, then and there to testify the truth, in a matter in suit, wherein C. D. is plaintiff and E. F. defendant, and this you are not to omit, under the penalty of the law. Given under my hand and seal, this _____ day of _____ 184 . JOHN DOE, J. P.

Which subpoena may be served by a constable, or any other person, by reading the same to the witness; but no mileage shall be allowed to the person serving the same.

SEC. 37. In all cases where a justice of the peace is required to issue a subpoena at the instance of either party to a suit, it shall be his duty to insert the names of four witnesses in each subpoena, if the party demanding the same shall require the attendance of that number; and in no case shall a justice of the peace be permitted to charge and receive pay for any subpoena commanding the citation of a less number, where as many as four shall be required by the same party, at the same time, to be used in the same suit.

SEC. 38. Each witness so summoned, shall be entitled to fifty cents for attending on each trial, to be taxed with the other costs of suit, and paid when the debt and costs are collected; but if more than two witnesses shall be sworn in any case, to testify to one fact on the same side, the party requiring such extra witness shall be at the whole expense of procuring the same; but no such fee shall be taxed by the justice, unless claimed by the witness attending.

SEC. 39. In all trials before justices of the peace, when either party may not have a witness or other legal testimony, to establish his or her demand, discount or set-off, the party claiming such demand, discount or set-off, may be permitted to prove the same by the testimony of the adverse party; and if such adverse party shall not appear at the time of trial, or shall refuse to be sworn, or to testify, then the party claiming the same shall be permitted to prove his or her demand, discount or set-off, by his or her own oath: *Provided*, That such party claiming the benefit of his own oath, or that of the adverse party, shall first make oath that he has a demand, discount or set-off, in said cause, and that he knows of no witness by whom he can prove the same, except by his own oath, or that of the adverse party: *Provided, further*, That no person shall be allowed to prove his demand, discount or set-off, unless the adverse party be present, or shall have been notified thereof, and for which purpose, the justice may continue the cause for such time as may be necessary.

SEC. 40. When any plaintiff at the time of commencing his suit, shall signify his desire to prove his debt or demand as provided in the preceding section, and shall file the necessary affidavit, the justice may issue his summons in the following form:

STATE OF ILLINOIS, } *The People of the State of Illinois, to any constable*
 COUNTY. } sct. *of said county,* GREETING:

You are hereby commanded to summon C. D. to appear before me, at my office in _____ in said county, on the _____ day of _____ 184____, at the hour of _____ o'clock, _____ M., to answer the complaint of A. B. for a failure to pay him a certain demand not exceeding one hundred dollars, and hereof make due return as the law directs. The said defendant is hereby also notified that the said plaintiff says that he has no witness by whom to prove his demand, except it be by his own oath, or the oath of the said defendant; and unless the said defendant appear at the trial of said complaint, the plaintiff will be permitted to prove his demand by his own oath, as by law is directed in such cases.

Given under my hand and seal at my office in _____ in said county, this _____ day of _____ A. D. 18____ E. F., J. P., [L. s.]

SEC. 41. If the defendant or defendants shall not appear at the time of trial, after being served with such summons according to law, and no sufficient reason be assigned to the justice why he or she does not appear, then the plaintiff shall be permitted to prove his or her demand by his or her own oath, without giving any other or further notice to the defendant or defendants.

SEC. 42. If both parties agree to have a difference decided by a justice of the peace, without process, he shall enter the same on his docket, noting particularly such consent, and proceed as in other cases.

SEC. 43. In all cases the parties to a suit before a justice shall have the privilege of referring the difference between them to arbitrators, mutually chosen by them, who shall examine the matter in controversy, and make out their award thereon in writing, and deliver the same to the justice, who shall enter the said award on his docket, and give judgment according thereto.

SEC. 44. At any time before judgment is given in any suit before a justice, either party may demand to have the cause tried by a jury, provided the matter in controversy exceed twenty dollars; whereupon, it shall be the duty of the justice to issue his writ, directed to any constable, commanding him to summon a jury of six men, or twelve, if a less number be objected to; and the said jury shall be impaneled as soon as may be, the justice adjourning the cause if necessary to any time, not exceeding three days, for that purpose. The jury, when impaneled, shall be sworn by the justice to try the case according to the evidence, and the justice shall enter judgment upon their verdict, according to the finding thereof.

SEC. 45. The following shall be the form of the writ for summoning the jurors, viz:

STATE OF ILLINOIS, } *The People of the State of Illinois, to any constable of said*
 COUNTY. } *county,* GREETING:

We command you to summon _____ lawful men of your county to appear before me at _____, on the _____ day of _____ 184____, who are not of kin to _____ plaintiff, or to _____ defendant, to make a jury between said parties, in a plea of _____ because as well the said plaintiff as the said defendant have put themselves upon the country for trial; and have you then there the names of the jury and this writ. Witness my hand and seal, this _____ day of _____ 18____.

JOHN DOE, J. P.

SEC. 46. In trials of the right of property taken on execution, attachment or other process, by constables, the number of jurors shall be six instead of twelve;

unless all the parties to the trial shall agree upon a larger number, not exceeding twelve, in which case the number agreed on shall constitute the jury: *Provided*, That either party shall have the right to require twelve jurors, upon advancing the additional costs and fees accruing in consequence of increasing the number over six, such additional costs and fees not being in any event chargeable against the other party.

SEC. 47. No justice of the peace shall order a trial by jury without the consent of all parties, unless such jury be demanded before the hearing of any evidence in the case, nor unless the party demanding such jury shall first pay the fees to which such are by law entitled.

SEC. 48. In all cases where a witness shall be duly served with a subpoena, and shall fail to attend at the trial, conformably thereto, and in all cases where a person shall be summoned as a juror, to try any cause before a justice of the peace, and shall fail to attend at the time and place appointed in such summons, the justice shall have power to issue an attachment, directed to any constable of the county, commanding him forthwith to bring before such justice, the body of such juror or witness so failing to attend as aforesaid, to show cause why he should not be fined for such contempt; and on the appearance of such juror or witness on such attachment, it shall be lawful for the justice of the peace to fine him, in any sum not less than one dollar, nor more than ten dollars, or wholly discharge him, if satisfactory excuse be made.

SEC. 49. If any juror, summoned as aforesaid, shall be interested in the event of the suit, or of kin to either party, or shall have expressed his opinion on the matter about to be tried, or shall, for any other cause, to be judged of by the justice, be considered as a partial or improper juror, in that case the justice shall discharge such juror; and when, by such discharge, or the failure of any juror to attend, the jury shall not be complete, the justice shall direct the constable to summon as many persons as shall be required to complete such jury instantly, from among the bystanders or other persons in his bailiwick, which summons shall be verbal; and the persons so summoned shall be bound to serve on such jury, and on refusal or failure to do so may be attached and fined for contempt as aforesaid.

SEC. 50. Every person who shall appear before a justice of the peace, when acting as such, or who shall be present at any legal proceeding before a justice, shall demean himself in a decent, orderly and respectful manner; and for failure to do so, such person shall be fined by the said justice for contempt, in any sum not more than five dollars.

SEC. 51. Previous to the commencement of any trial before a justice of the peace, the defendant or his or her agent, may make oath, that it is the belief of such deponent that the defendant can not have an impartial trial before such justice; whereupon, it shall be the duty of the justice, immediately to transmit all the papers and documents belonging to the suit, to the nearest justice of the peace, who shall proceed as if the said suit had been instituted before him.

SEC. 52. In all cases, before justices of the peace, either party may have the case continued any reasonable time, not exceeding one month, for the purpose of taking the deposition of any non-resident witness; which deposition shall be taken in conformity to the manner of taking and returning depositions of non-resident witnesses in the circuit courts in this State.

SEC. 53. No execution shall be issued by a justice of the peace, until after the expiration of twenty days from the date of the judgment, on which such execution is to be issued, unless the party applying for the same, or the agent of such party

shall make oath that he believes that the debt will be lost unless execution be issued forthwith. If such oath be made, then the execution shall be issued immediately and levied; but no sale of any property under such execution shall take place within twenty days from the date of the judgment; nor shall the issuing of such execution deprive either party of the right to appeal.

SEC. 54. All executions issued by a justice of the peace, shall be directed to any constable of the proper county, and made returnable to the justice issuing the same, within seventy days from the date; such executions shall be levied only on personal property, and shall be in the following form as nearly as may be, viz:

STATE OF ILLINOIS, } *The People of the State of Illinois, to any constable of said*
COUNTY. } *county, GREETING:*

We command you, that of the goods and chattels of A. B., in your county, you make the sum of dollars and cents debt, and dollars and cents cost, which C. D. lately recovered before me in a certain plea, against the said A. B., and hereof make return to me within seventy days from this date. Given under my hand and seal, this day of 184 .

JOHN DOE, J. P.

SEC. 55. When it shall appear by the return of any execution issued as aforesaid, that the defendant has not personal property within the county, sufficient to satisfy the debt, and it is desired by the plaintiff to have execution issued to some other county in which it is alleged that the defendant has personal property, the justice shall issue execution, directed to any constable of the county where such property shall be said to be; to which execution shall be attached an official certificate of the clerk of the county commissioners' court of the county in which the same shall be issued, setting forth, under the seal of said court, that such justice so issuing, was at the time of issuing of said execution, a justice of the peace in and for said county; and no constable shall be bound to execute any such process unless so authenticated.

SEC. 56. When an execution shall be issued to another county, as provided in the preceding section, it shall be the duty of the constable receiving the same, to proceed to the collection of the same, and make return as in other cases.

SEC. 57. When it shall appear by the return of the execution first issued as aforesaid, that the defendant has not personal property sufficient to satisfy the debt and costs within the county in which judgment was rendered, and it is desired by the plaintiff to have the same levied on real property, in that, or any other county, it shall be lawful for the justice to certify to the clerk of the circuit court of the county in which such judgment was rendered, a transcript, which shall be filed by said clerk, and the judgment shall thenceforward have all the effect of a judgment of the said circuit court, and execution shall issue thereon, out of that court as in other cases.

SEC. 58. Appeals from judgments of justices of the peace to the circuit court, shall be granted in all cases except on judgment confessed: *Provided*, The party praying for an appeal shall, within twenty days from the rendering of the judgment from which he desires to take an appeal, enter into bond with security to be approved and conditioned as hereinafter provided.

SEC. 59. The bond required to be given shall be in substance as follows: "Know all men by these presents, that we, A. B. and C. D., are held and firmly bound unto E. F., in the penal sum of (here insert double the amount of judgment and costs,) dollars, lawful money of the United States, for the payment of which,

well and truly to be made, we bind ourselves, our heirs and administrators, jointly, severally and firmly by these presents. Witness, our hands and seals, this day of 18 . The condition of the above obligation is such, that whereas, the said E. F. did, on the day of A. D. 18 , before , a justice of the peace for the county of , recover a judgment against the above bounden A. B., for the sum of dollars; from which judgment the said E. F. has taken an appeal to the circuit court of the county of aforesaid, and State of Illinois. Now, if the said A. B. shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

[L. s.]

[L. s.]

[L. s.]

Approved by me at my office, this day of 18 .
L. M., J. P."

SEC. 60. The party desiring such appeal, may file his bond in the office of the justice who shall have rendered the judgment; such bond to be approved by such justice, whose duty it shall be to suspend all proceedings in the case; and if execution shall have been issued, he shall recall the same, and who shall within twenty days after receiving and approving of the appeal bond, file the same in the office of the clerk of the circuit court, together with all the papers and transcript of the judgment he had given, with a certificate under his hand, that the said transcript and papers contain a full and perfect statement of all the proceedings before him.

SEC. 61. Or, the appealing party may file his bond in the office of the clerk of the circuit court of the proper county, within the time aforesaid, which bond shall be approved by the clerk; upon the filing and approval of which bond, the clerk shall issue a *supersedeas*, enjoining the justice and constable from proceeding any further in said suit, and suspending all proceedings in relation thereto, and shall issue a summons to the appellee to appear at the term of the court to which the appeal is returnable, which summons shall be served and returned as in other cases.

SEC. 62. So soon as the clerk shall issue a *supersedeas* as aforesaid, the justice who gave the judgment, and any constable in whose hands an execution or other process may be, in relation thereto, shall suspend all further proceedings thereon; and the said justice shall return all the papers and a transcript of the judgment he had given, to the clerk of said court, with a certificate under his hand, that the said transcript and papers contain a full and perfect statement of all the proceedings before him.

SEC. 63. One or more plaintiffs, or defendants, in causes decided by justices of the peace, shall be allowed the right of appeal to the circuit court, without the consent of the others; and when one of several, appeals, the *supersedeas* shall issue directing a suspension of all further proceedings upon the judgment, as though all had joined in the appeal.

SEC. 64. When an appeal bond shall be executed by one of several parties, from the judgment of a justice of the peace, the clerk of the circuit court shall issue a summons against the other parties, notifying them of the appeal in the said circuit court, and requiring them to appear and abide by and perform the judgment of the court in the premises; which summons shall be served as other process issued in

appeal cases; and in case such summons shall be returned that parties are not found, the cause shall, at the first term of the court, be continued, but at the second term, shall be tried; and the court shall have power to give the same judgment in appeals taken under the provisions of this chapter as though all the parties to the judgment had joined in the appeal.

SEC. 65. If upon the trial of any appeal, the bond required to be given shall be adjudged informal or otherwise insufficient, the party who shall have executed such bond, shall in nowise be prejudiced by reason of such informality or insufficiency: *Provided*, He will, in a reasonable time, to be fixed by the court, execute and file a good and sufficient bond.

SEC. 66. Upon the trial of all appeals before the circuit court, no exception shall be taken to the form or service of the summons issued by the justice of the peace, nor to any proceedings before him; but the court shall hear and determine the same in a summary way, according to the justice of the case, without pleading in writing.

SEC. 67. If it shall appear, however, that the justice had no jurisdiction of the subject matter of the suit, the same shall be dismissed at the cost of the plaintiff.

SEC. 68. The plaintiff in the justice's court shall be plaintiff in the circuit court on the trial of the appeal, and the rights of the parties shall be the same as in original actions.

SEC. 69. Parties on the trials of appeals in the circuit court, shall have the benefit of the provisions of the thirty-ninth, fortieth and forty-first sections of this chapter, as fully as in trials before justices of the peace.

SEC. 70. The security in any appeal bond shall be liable thereon for the amount of the original judgment, and all costs thereon in case the said appeal be dismissed, and shall be liable also on said bond for whatever judgment may be rendered by the circuit court, in case the original judgment be affirmed by said circuit court, either in whole or in part.

SEC. 71. Execution may issue out of the circuit court on all judgments rendered in cases appealed, as in other cases originating in the circuit court.

SEC. 72. The judges of the circuit and probate courts shall have power within their respective jurisdictions, and it shall be their duty, upon application, made as hereinafter mentioned, to grant writs of *certiorari*, to remove causes from before justices of the peace into the circuit court, who shall indorse an order for the same, upon the petition of the party praying such writ, and on producing the same to the clerk of the circuit court, he shall issue said writ in conformity to the provisions of this chapter.

SEC. 73. No writ of *certiorari* shall issue after the expiration of six months from the time of the rendition of judgment.

SEC. 74. Before any writ of *certiorari* shall issue, the party applying therefor shall give bond, with security, in the same manner and with the same conditions, and when the same shall be defective, may be perfected as bonds in cases of appeals from justices of the peace. The writ of *certiorari* shall require the justice to certify to the circuit court, a transcript of the judgment and other proceedings had before him; and in no case shall the justice be required to send up a minute or memorandum of the evidence given before him; but upon the return of said writ, such proceedings shall be had thereon, as in cases of appeals.

SEC. 75. The petition, on application for writs of *certiorari*, shall set forth and show upon the oath of the applicant, that the judgment before the justice of the peace was not the result of negligence in the party praying such writ; that the

judgment in his opinion is unjust and erroneous, setting forth wherein the injustice and error consist, and that it was not in the power of the party to take an appeal in the ordinary way, setting forth the particular circumstances which prevented him from so doing.

SEC. 76. The justice of the peace, constable, and other persons concerned, shall, as soon as the writ of *certiorari* shall be served, stay all further proceedings in that case, until the further order of the circuit court.

SEC. 77. If the judgment of the justice shall be reversed by the circuit court, in whole or in part, such reversal shall not vitiate any sale on execution, which shall have been effected before the issuing of the writ of *certiorari*; but in such cases, the circuit court shall have power to assess the damages which shall have accrued in consequence of such sale, and to cause judgment to be entered or a deduction made therefor; and in all cases of a partial reversal of judgment, either in case of appeals or *certiorari*, the court shall have power to apportion the costs between the parties, according to justice.

SEC. 78. The personal property of every defendant in a judgment before a justice of the peace, shall be bound for the payment of such judgment, from the delivery of the execution issued thereon, to the constable; and the real property of such defendant shall be bound as aforesaid, from the date of the filing of a transcript of the judgment in the clerk's office, as provided in this chapter.

SEC. 79. Every constable to whom an execution shall be delivered, shall indorse on the back of the same, an exact memorandum of the day and hour when the same shall have come to his hands, and shall immediately proceed to levy the same; indorsing also on the back of the execution, the date of such levy, and making an exact inventory of the property on which the same shall have been levied, and shall appoint a day and hour for the sale of said property, giving ten days previous notice of such sale, by advertisement in writing, to be posted up at three of the most public places in the county; and on the day so appointed, the said constable shall sell the property so levied on, or so much thereof as may be necessary to pay the debt, interest and costs, to the highest bidder.

SEC. 80. Any constable shall be authorized to remove property levied on by him, when it shall be necessary for the safe keeping of the same: *Provided*, That if the defendant shall desire to retain the property so levied on, until the day of sale, it shall be lawful for the said constable to allow the defendant so to keep the same, if said defendant shall give bond to said constable, in double the amount of the execution, with good security, conditioned for the delivery of said property, to the same constable, at the time and place of sale to be named in said bond; and if the said property shall not be delivered as aforesaid, at the time and place of sale, the constable having the execution, may proceed to levy the same, upon the same or any other property of the defendant, or upon the property of the security in such bond, and shall sell the same, giving two days public notice of such sale by advertisement, to be posted at one public place.

SEC. 81. When the defendant, upon whom any summons or warrant issuing from a justice of the peace, shall be served, shall pay, or tender to the constable, the amount actually due, with all costs then accrued, and shall prove the same upon trial, and bring the money forward and deposit it with the justice of the peace, no costs which shall thereafter accrue, shall be adjudged against him, but the plaintiff shall pay the same.

SEC. 82. On the return of all executions, the constable shall pay over to the justice of the peace who issued the same, all money not previously paid over to the plaintiff; and also, all witness' fees which remain unpaid to any witness; and it shall be the duty of the justice of the peace to post up in his office, at least once in three months, a list of all witness' fees in his hands, and the names of the persons to whom they belong; and for a failure to comply with this provision, a justice of the peace shall be liable to a fine of fifty dollars, to be recovered by action of debt in the name and behalf of the county commissioners' court.

SEC. 83. No person who is not a resident of this State, shall commence any action before a justice of the peace, until such non-resident shall file with the justice before whom such action may be brought, a bond, with sufficient security, for the payment of all costs which may be awarded against the plaintiff, should he fail in his suit; which bond shall be in the following form, as near as may be, inserting the names of the parties, the county and State:

“ STATE OF ILLINOIS, { A. B. }
 vs. { Demand \$ ———
 COUNTY OF C. D. }

I, E. F. do enter myself security for all costs that may accrue in the above case, this day of 18 .”

SEC. 84. Such bond shall be signed by the security; and if the said plaintiff shall be cast in his suit, discontinue, or make default, and shall not, within ten days thereafter, pay to the justice all the costs that may have been occasioned to the defendant, to the justice and constable, jurors or witnesses, the justice shall issue his execution against the security for the amount thereof, accompanied with a bill of costs, in which shall be set down every particular charged. And if any suit shall be commenced by a non-resident as aforesaid, without filing a bond for costs as aforesaid, the suit shall be dismissed on the motion of the defendant, and the plaintiff shall be liable to pay all costs occasioned thereby, which may be recovered before any justice of the county, in the name of the party injured.

SEC. 85. When any defendant shall evade the service of process, and not listen to the same, or secrete himself, then the officer shall serve the same by leaving a copy at his place of residence with some white person of the age of ten years or upwards; and in all such cases, the constable shall make a special return when and how served, and the circumstances attending the same; and if the justice shall be satisfied that the defendant evaded the service by reading, and that the party is sufficiently notified and summoned, he shall proceed to hear and determine the case.

SEC. 86. Any justice of the peace may appoint a suitable person to act as constable in a criminal or other case, where there is a probability that a person charged with any indictable offence will escape, or that goods and chattels will be removed, before application can be made to a qualified constable; and the person so appointed shall act as constable in that particular case, and no other; and any temporary appointment so made as aforesaid, shall be made by a written indorsement, under the seal of the justice deputing, on the back of the process, which the person receiving the same shall be deputed to execute.

SEC. 87. When any person shall be appointed and qualified to act as a constable, it shall be the duty of the clerk of the county commissioners' court to notify the sheriff of the county of such appointment; and the said sheriff shall keep a list of the constables within his county; and it shall be the duty of each sheriff to summon four constables (if necessary) of his county, to attend at each term of the circuit court, giving them ten days' notice, and taking them in rotation; which

constables, when so summoned, shall attend, and act under the sheriff as his deputies, during the sitting of such court; and any constable failing to attend as aforesaid, or refusing to act as such deputy, may be fined by said court for contempt thereof.

SEC. 88. It shall be the duty of every constable, when any felony or breach of the peace shall be committed in his presence, forthwith to apprehend the person committing the same, and bring him before some justice of the peace, to be dealt with according to law: to suppress all riots and unlawful assemblies, and to keep the peace, and also to serve and execute all warrants, writs, precepts and other process, to him lawfully directed; and, generally, to do and perform all things appertaining to the office of constable within this State.

SEC. 89. When any person shall be about to commence an action of trespass or trover, before a justice of the peace, and he shall make oath before such justice that he verily believes that the benefit of whatever judgment may be recovered in such action, will be in danger of being lost, unless the defendant or defendants be held to bail; upon such oath being made, the justice shall issue a warrant, as in cases for debt, varying the same to suit the action, and the defendant may release his body by giving special bail, as in actions of debt.

SEC. 90. Upon all judgments in actions of trespass or trover, the justice may issue an execution against the goods and chattels or body of the defendant, at the election of the plaintiff.

SEC. 91. In cases of judgment for debt, whenever the plaintiff or his authorized agent shall make oath before the justice, in whose office such judgment may be, that he or she verily believes the defendant or defendants to be able to pay such judgment, and withholds the money, or secretes his, her or their property from the officer, so that the debt can not be levied, it shall be lawful for the plaintiff to demand, and for the justice to issue execution against the body of such defendant or defendants.

SEC. 92. In all cases in which a defendant shall give special bail under the provisions of this chapter, and shall not be surrendered on or before the return day of the *feri facias* upon the judgment, nor a sufficiency of property be found to pay the judgment and costs, within the time aforesaid, it shall be the duty of the justice of the peace, upon the application of the plaintiff, or his agent, to issue a summons against the special bail, in the following form, as nearly as may be, to-wit:

STATE OF ILLINOIS, } *The People of the State of Illinois, to any constable of said*
COUNTY. } *county, GREETING:*

You are hereby commanded to summon _____ to appear before me, at _____ on the _____ day of _____ at _____ o'clock, to show cause, if any he have, why judgment should not be rendered against him, as the special bail of _____ upon a *capias* issued by me against him, in favor of _____ for the sum of _____ dollars and _____ cents, the amount of the judgment rendered against the said _____ in favor of the said _____ and hereof make due return, as the law directs. Given under my hand and seal, this _____ day of _____ 18 ____ . JOHN DOE, J. P. [L. s.]

In which summons the justice shall specify a certain day, place and hour for the trial, not less than ten, nor more than fifteen days from the date thereof, at which time and place the defendant is to appear; which process shall be served and return made as in other cases.

SEC. 93. If the defendant does not appear, the justice shall hear the case, enter judgment and award execution as in other cases.

SEC. 94. If the defendant shall appear at the time and place appointed for trial, he shall be permitted to show cause for his failure to comply with the condition of his undertaking, or to show that he hath complied with the same; and if it shall appear that the defendant was prevented from surrendering the body of the original defendant, by the act of the plaintiff, or that the said original defendant had departed this life previous to the time required for making such surrender, or that his health was such as to endanger his life by such surrender, or that he had delivered the body in execution, according to the condition of the recognizance, then the bail shall be released and discharged from all liability.

SEC. 95. In all cases of assault, assault and battery and frays, any justice of the peace may, upon his own knowledge, or upon the oath of any competent person, issue his warrant to any constable of his county for the arrest of every person charged with either of said offences; and upon the arrest of such person, shall cause a jury to be summoned, (unless the party accused shall dispense with a jury) who shall hear the cause, and if they find the accused guilty, shall assess such fine as they shall deem just, not however, to be less than three nor more than one hundred dollars.

SEC. 96. Upon the jury returning their verdict of guilty, and the assessment of the fine, the justice shall record the same in his docket or record book, and proceed to render judgment thereon for the amount of the said fine and costs; but if the jury return a verdict of not guilty, the justice shall record the same, and discharge the defendant or defendants without costs.

SEC. 97. Upon the rendition of such judgment, the justice shall issue execution for the fine and costs, which may be levied upon any personal property of the defendant or defendants, which shall be sold for whatever it will bring in cash, after giving notice, as in other cases: *Provided, however,* That if the party so convicted have a family, then the constable shall reserve from execution one bed and bedding, one cow and ten dollars' worth of household and kitchen furniture.

SEC. 98. If the constable shall return upon such execution, that the defendant or defendants have no goods and chattels whereof to make the money, the justice shall issue a *capias* against the body of the defendant or defendants, and the constable shall arrest such person or persons, and commit him or them to the jail of the county, there to remain forty-eight hours; and if the fine exceed ten dollars, then to remain in said jail twenty-four hours for every five dollars over and above the said ten dollars, and so on in proportion to the amount of said fine.

SEC. 99. If any person so convicted, shall wish to appeal to the circuit court, he shall signify the same to the justice of the peace who gave the judgment, and the justice shall give him a statement of the amount of the fine and costs, and upon producing the same to the clerk of the circuit court of the proper county, the clerk shall write a bond to the people of the State of Illinois, in a penalty double the amount of the fine, and a sufficiency to cover all costs, conditioned for the payment of the amount of whatever judgment the court may render against said defendant, which the said party appealing shall execute, with sufficient security to be approved by the said clerk; and when such bond shall be executed, the clerk shall notify the justice who tried the cause thereof, and the said justice shall stay all further proceedings, and return the papers to the next succeeding circuit court, when the same shall be tried: *Provided,* All such appeals shall be prayed for, and the bond executed within five days after judgment rendered.

SEC. 100. If the defendant shall be found guilty in the circuit court, judgment shall be rendered against both principal and security in the appeal bond, for the amount of the fine assessed by the jury in said court, and all costs that may have accrued.

SEC. 101. If any person shall be dissatisfied with the verdict given in such cases, before any justice of the peace, because of the fine being too low, or because the defendant may have been acquitted, he shall be permitted to remove the said case into the circuit court, upon his executing bond to the people of the State of Illinois, before the clerk, in a penalty sufficient to cover all costs that have or may accrue, conditioned for the payment of all costs, in case the defendant shall be acquitted, or the fine not increased; which bond shall be executed in ten days after the judgment of the justice shall have been given; and when said bond is executed, the clerk shall notify the justice thereof, and said justice shall return all the proceedings to the said court; and if the defendant shall be acquitted in the circuit court, or the fine not increased by the jury, the court shall render judgment against the party who removed the said case into the circuit court, and his security in the appeal bond, for all costs occasioned by the appeal: *Provided*, The party removing a case into the circuit court shall not be a witness against the defendant in the appeal in said court, upon the trial of such appeal.

SEC. 102. When any defendant convicted of either of the said offences, or any person dissatisfied with the verdict as aforesaid, appeals to the circuit court, it shall be the duty of the justice to return to the clerk when he returns the papers in the case, the names of all material witnesses who shall have testified on the trial, and the clerk shall issue subpoenas for them.

SEC. 103. When the case is removed into the circuit court, as provided by the one hundred and first section, the party removing it shall cause a summons to be issued and served upon the defendant, notifying him of the appeal; and if the defendant can not be found in the county, to serve said process upon, the case shall not be continued; but the court shall cause his appearance to be entered, and proceed to trial, as though the defendant were present, and had filed the plea of not guilty.

SEC. 104. If any person accused of either of the above offences shall confess himself guilty, the jury, or the justice, if he shall not require a jury, shall hear the evidence and assess the fine; and the justice shall enter judgment and issue execution, subject to appeal as in other cases.

SEC. 105. No person shall be proceeded against for the commission of any of the offences herein enumerated, after the expiration of twelve months from the time the offence was committed, unless such offender shall withdraw himself from the county for the purpose of avoiding trial, in which case he shall be tried at any time within twelve months after his return or apprehension.

SEC. 106. It shall be the duty of each of the justices of the several counties to return to the county commissioners' court, at each regular term thereof, a list of all fines before them assessed, stating the name or names of the defendant or defendants, and of the constable or constables charged with the collection of said fine or fines, to enable the said court to settle with the said constables; and a failure of any such justice, before whom any fine shall have been assessed under the provisions of this chapter, to make such return, shall work a forfeiture of double the amount of the fines assessed before him, to be recovered as prescribed in the succeeding section.

SEC. 107. The constable charged with the collection of any such fine, shall account for and pay over to the county commissioners' court, at every regular term thereof, all moneys which he may have so collected; and upon a failure to do so, he shall forfeit and pay double the amount of money so received, to be recovered in the name of the county commissioners of the proper county for the use of the county, in any court having jurisdiction thereof. The constable shall also be authorized to receive all fines before execution issued, and shall account therefor, and pay over the same in the same manner, and under the same penalties as before provided.

SEC. 108. The county commissioners' courts shall pay over to the county treasurers respectively, all moneys by them received as aforesaid, and take their receipts therefor; which receipts shall be deposited with the clerks of said courts, and by them preserved: and the county treasurers shall account for said moneys in the same manner that they account for other public money by them received.

SEC. 109. In all criminal prosecutions before a justice of the peace, where the party accused shall be found not guilty, and it shall appear to the justice before whom such case shall be tried, that there was no reasonable ground for said prosecution, and that it was maliciously entered, that in such case, the justice of the peace is hereby authorized to give judgment against the complainant for the costs of said suit, and issue execution thereon.

SEC. 110. When the docket and papers of any justice of the peace shall be transferred to any other justice of the peace, as provided in section one hundred and twelve of this chapter, such justice receiving the same may proceed to the completion of all unfinished business, the issuing of execution upon judgments remaining unsatisfied upon such docket, and collect the same, and have the same power in respect of such docket and papers as if the same pertained to proceedings originally instituted before him.

SEC. 111. The same articles of personal property shall be exempt from executions issued under the provisions of this chapter, and subject to the same restrictions as is provided in chapter fifty-seven of the Revised Statutes; except as specified in the ninety-seventh section of this chapter.

SEC. 112. When any justice of the peace shall resign his office, or remove from the county or district in which he was elected, it shall be his duty to deliver over his docket and papers relating to the business transacted before him, to the nearest justice of the peace of his county, and to return to the office of the clerk of the county commissioners' court, all copies of the statutes which he may have received from that office; and in case of the death of any justice of the peace, it shall be the duty of the person having possession of said docket, papers and statutes, to deliver them over as aforesaid.

SEC. 113. Any constable to whom an execution shall have been delivered, and whose term of office shall expire before the expiration of the time within which the return of such execution is required by law, shall be authorized to proceed in all matters relating to said execution, and in the same manner to collect the same, that he might have done, had the term of office of such constable not have expired; and the constable and sureties shall be liable for any neglect of duty, and for all moneys collected upon such executions in the same manner, and to the same extent they would have been if the term of office of such constable had not expired.

SEC. 114. All bonds given by justices of the peace and constables shall remain in force five years after the expiration of their respective terms of office, and when

such bonds are renewed, or new bonds are given, such renewal or giving of a new bond shall not satisfy or vacate any such previous bond, but each bond shall stand good in relation to all matters and things done or omitted to be done, within the term of office for which such bond shall have been given: *Provided*, That where by law, any justice or constable shall be authorized or required to complete any business, or performing any duties growing out of business commenced, and in their hands previous to going out of office, the bond shall apply to such cases until such business is concluded by such justice or constable.

SEC. 115. Any justice of the peace, failing or refusing to deliver any statutes, books, dockets or papers as required by this chapter, for the space of ten days after the same are demanded, shall forfeit and pay the sum of ten dollars, to be recovered by an action of debt in the name of the county commissioners' court, for the benefit of the county; besides being, together with his securities in his official bond, liable to the county and to all persons interested, for all damages and losses which may be sustained by reason of such failure or refusal.

SEC. 116. Upon the failure of a justice of the peace or constable to pay over any money, by him collected or received, as herein provided, to any person entitled to receive the same, his or her agent or attorney, such person may proceed against such justice or constable in a summary way, either before a circuit court or some justice of the peace of the proper county, by motion, upon giving to such justice or constable five days' notice of the application; and recover the amount so neglected or refused to be paid, with twenty per cent. damages thereon, for such detention, and shall have execution therefor.

SEC. 117. If any justice or constable against whom proceedings shall have been commenced, as provided in the preceding section, shall pay or satisfy the amount claimed by the party prosecuting, with the costs, the proceedings shall be dismissed, and without judgment for the damages specified in the preceding section.

SEC. 118. If any constable shall neglect or fail to return an execution within ten days after its proper return day, or if the demand, debt or claim be wholly or in part lost, or if any special damage shall arise to any party by reason of the neglect or refusal to act, or the misfeasance or nonfeasance of any constable in the discharge of any official duty, the party aggrieved may have his action in the circuit court; or, when the amount claimed does not exceed one hundred dollars, before any justice of the peace of the proper county, against such constable and his sureties on the official bond of such constable, and shall recover thereon the amount of said execution, with interest from the date of the judgment upon which the original execution issued.

SEC. 119. In suits on the official bonds of justices of the peace and constables, a copy of such bond, authenticated under the official signature and seal of the county commissioners' clerk, with whom it is filed, may be read in evidence.

SEC. 120. When judgment shall have been rendered against any justice of the peace or constable and his securities on his official bond, execution may issue against all of them, but the officer executing the same shall not levy upon the property of the securities until he shall fail to find sufficient property of the justice of the peace or constable to satisfy such execution: *Provided, however*, The execution shall be a lien upon the property of the securities as in other cases.

SEC. 121. In all cases of suits on the official bonds of justices of the peace and constables, judgment shall be entered for the full penalty of the bond, in favor of the county commissioners' court, but execution shall only issue for the amount found to be due, with interest and costs.

SEC. 122. After such judgment is obtained, the court may from time to time, award execution against the defendant or defendants, for any breach of the conditions of their bond, or for the violation of any of the provisions of this chapter. No such subsequent execution shall, however, be issued until the defendants shall be summoned by a writ of *scire facias*, in the usual form, to appear and show cause, why such execution shall not be awarded.

SEC. 123. Securities shall not be liable in execution beyond the amount of the penalty of their bond, but the liability of the principal shall continue after the penalty of the bond is exhausted, and the court may continue to award execution as occasion shall require.

SEC. 124. Justices and constables, and their securities, may have the benefit of appeal, *certiorari*, and writ of error, from all decisions and judgments rendered in suits against them as is provided in other cases.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Acts Nos. 7, 17 and 18.]

CHAPTER LX.

LANDLORD AND TENANT.

SECTION

1. Reasonable rent for lands held without special agreement, may be collected.
2. Persons holding over by collusion with tenant, to pay double rent.
3. Tenant not quitting premises according to notice by him given, to pay double rent.
4. If a half year's rent be due, landlord may commence action of ejectment; effect of judgment in such action; if tenant pays arrearages and costs, suit to be discontinued.
5. Tenant sued in ejectment by other than landlord, to give landlord notice.
6. Distress for rent, how landlord shall proceed in

SECTION

- case of; entry of amount due by clerk of court or justice; sale; return.
7. Property of tenant in county may be seized, but not the property of other persons.
8. Crops, lien of landlord upon, for rent.
9. Abandonment of premises, how landlord may proceed in case of, as to crops thereon.
10. When defendant shall not replevy property in five days, how property to be disposed of; notice of sale; sale; overplus to be restored.
11. Perishable property, how officer may dispose of.
12. What property is exempt from distress for rent.

SECTION 1. In all cases in which rent may be due and in arrear, on a lease for life or lives, and where lands shall be held and occupied by any person without any special agreement for rent, it shall and may be lawful for the owner or owners of such lands, or his, her or their executors or administrators, to sue for and recover such rent, or a fair and reasonable satisfaction for such use and occupation, by action of debt or assumpsit, in any court having jurisdiction thereof.

SEC. 2. If any tenant or tenants for life, lives, or for years, or any person or persons who are, or shall come into possession of any lands, tenements or hereditaments, by, from or under, or by collusion with such tenant or tenants, shall wilfully hold over any lands, tenements or hereditaments, after the expiration of such term or terms, and after demand made, and notice in writing given, for the possession thereof, by his, her or their landlord or landlords, lessor or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements or heredi-

taments shall belong, such person or persons so holding over, shall for the time such landlord or rightful owner be so kept out of possession, pay to the person or persons so kept out of possession, or their legal representatives, at the rate of double the yearly value of the lands, tenements or hereditaments so detained as aforesaid, to be recovered by action of debt or otherwise, in any court having cognizance of the same.

SEC. 3. If any tenant or tenants shall give notice of his, her or their intention to quit the premises, by him, her or them holden, at a time mentioned in such notice, at which the tenant would have a right to quit by the lease, and shall not accordingly deliver up possession thereof, the said tenant or tenants shall pay to the landlord or lessor, double the rent or sum which would otherwise have been due, to be collected in the same manner as the rent otherwise due should have been collected.

SEC. 4. In all cases between landlord and tenant, where one-half year's rent shall be in arrear and unpaid, and the landlord or lessor to whom such rent is due, has right by law to re-enter for non-payment thereof; such landlord or lessor may, without any formal demand or re-entry, commence an action of ejectment for the recovery of the demised premises. And in case judgment be given for the plaintiff in such action of ejectment, and the writ of possession thereon be executed thereon, before the rent in arrear and costs of suit be paid, then the lease of such lands shall cease and be determined, unless such lessee or lessees shall, by writ of error, reverse the said judgment, or shall by bill, filed in chancery, within six months after the rendition of such judgment, obtain relief from the same: *Provided*, That any such tenant or tenants may, at any time before final judgment on said ejectment, pay or tender to the landlord or lessor of the premises, the amount of rent in arrear, and costs of suit, and the proceedings on such ejectment shall thereupon be discontinued.

SEC. 5. Every tenant who shall, at any time be sued in ejectment, by any person other than his or her landlord, shall forthwith give notice thereof to his or her landlord, or to his or her agent or attorney, under the penalty of forfeiting two years' rent of the premises in question, or the value thereof, to be recovered by such landlord, by action of debt, in any court having cognizance thereof.

SEC. 6. In all cases of distress for rent, the person making the same, shall immediately file with some justice of the peace, in case the amount claimed does not exceed one hundred dollars, or with the clerk of the circuit court, in case it exceeds that sum, a copy of the distress warrant, together with an inventory of the property levied upon; and thereupon the party against whom the distress warrant shall have been issued, shall be duly summoned, and the amount due from him assessed and entered upon the records of the court finding the same. The said court shall certify to the person or officer making the same, the amount so found due, together with the costs of court; and said officer shall thereupon proceed to sell the property so distrained, and make the amount thus certified to him, and return the certificate so issued to him, with an indorsement thereon of his proceedings, which return and certificate shall be filed in the proper court.

SEC. 7. In all cases of distress for rent, it shall be lawful for the landlord, by himself, his agent or attorney, to seize for rent, any personal property of his tenant that may be found in the county where such tenant shall reside; and in no case shall the property of any other person, although the same may be found on the premises, be liable to seizure for rent due from such tenant.

SEC. 8. Every landlord shall have a lien upon the crops, growing or grown upon the demised premises in any year, for rent that shall accrue for such year.

SEC. 9. In case of the removal or abandonment of the premises or any part thereof, by such tenant, all grain or vegetables, grown or growing upon any part of the premises so abandoned, may be seized by the landlord, his agent or attorney, before the rent is due; and the landlord so distraining, shall cause the grain or vegetables so growing, to be properly cultivated and perfected, and in all cases husband such grain or vegetables, grown and growing, until the rent agreed upon shall become due, when it shall be lawful for such landlord, his agent or attorney, to sell and dispose of the same as in other cases of seizure, after the rent shall have become due, and also to retain a just compensation for his care, culture and husbanding of such grain or vegetables: *Provided*, That such tenant may at any time redeem the property so taken before the rent is due, by tendering the rent agreed upon, and all reasonable expenses attending the same, for care, cultivation and husbandry as aforesaid, or replevy the same, as in case of seizure, where the rent is due.

SEC. 10. When any goods or chattels shall be distrained for rent, and the tenant or owner of the goods so distrained shall not, within five days after such distress taken, and notice thereof, and the cause of taking, replevy the same, with sufficient security according to law, the person distraining, or his agent duly authorized, may, with the sheriff or constable of the county, cause the goods and chattels so distrained to be appraised by two reputable freeholders under oath; which oath may be administered by such sheriff or constable, to appraise said goods and chattels, according to their best judgment and understanding; the person making such distress, after having obtained such assessment, as specified in section six of this chapter, and on giving ten days' notice, may sell such goods and chattels at public auction, and after retaining the amount of rent distrained for, and the costs of distress and sale, shall pay the overplus, if any there be, to such tenant or tenants.

SEC. 11. Any landlord distraining, or officer or other person, in whose hands perishable property may be, when there is danger that the same will perish or be lost if it shall remain undisposed of until the conclusion of the suit, such landlord, officer or other person may sell the same as provided in the preceding section, and after paying the costs attending such sale, shall pay over the balance to the person or persons to whom the same shall be due.

SEC. 12. The same articles of personal property which are by law exempt from execution, except the crops grown or growing upon the demised premises, shall also be exempt from distress for rent.

APPROVED: March 3, 1845.

CHAPTER LXI.

LANDS.

SECTION

1. Contracts for sale of improvements on government lands, valid.
2. Possession of government lands, in certain suits, deemed to extend to three hundred and twenty acres of unsurveyed land, or one hundred and sixty acres of surveyed land, if such be the custom of the neighborhood.

SECTION

3. When land claimed is in separate parcels, how held.
4. Restriction as to unsurveyed land.
5. Such claim not to be good against a *bona fide* purchaser, or pre-emption claimant.
6. Duty of county commissioners' clerks to transmit lists of unlisted lands to auditor.

SECTION 1. All contracts, promises, assumpsits or undertakings, either written or verbal, which shall be made hereafter in good faith and without fraud, collusion or circumvention, for sale, purchase or payment of improvements made on the lands owned by the government of the United States, shall be deemed valid in law or equity, and may be sued for and recovered as in other contracts.

SEC. 2. The possession of any person settled on unsold lands of the United States, may, in actions of trespass, trespass *quare clausum fregit*, forcible entry and detainer and ejectment, (and in the absence of a paper title,) extend to three hundred and twenty acres of unsurveyed lands, or one hundred and sixty acres of surveyed lands, (if the custom of the neighborhood extend to so many acres.)

SEC. 3. When such claim is made of surveyed lands, lying in separate parcels, the person claiming the same shall not have the benefit of the preceding section, unless he shall reside on or near the same, nor unless it be so plainly marked that it can be plainly designated and distinguished from adjacent lands.

SEC. 4. If such claim be made of unsurveyed lands, the person claiming the same shall not have the benefit of the second section, unless such lands be so plainly marked and designated, as to be distinguished from adjacent lands.

SEC. 5. But such claim shall not be pleaded or set up in bar of any action, at any time commenced or to be commenced by a *bona fide* purchaser or purchasers of such lands from the United States, or person entitled to the right of pre-emption on the same, under any act of Congress now in force, or hereafter to be in force.

SEC. 6. In all cases where the clerk of any county commissioners' court of this State, shall come in possession of the fact, that there is land situated in the county in which he is acting as clerk, which land has not been transmitted to said clerk, by the auditor of State, and which has been actually granted to any person or persons, and which has not been listed by any person, and that taxes are due and owing the State or county, which remain unpaid, said clerk shall proceed to list the same in the name of the person or persons to whom said lands were granted; and shall proceed to advertise and sell the same for taxes, as other non-resident lands are now sold.

APPROVED: March 3, 1845.

CHAPTER LXII

L A W S .

SECTION

1. Common and statute law of England, how far to be of force in this State.
2. Bills, how to become laws, notwithstanding the objections of the council of revision.
3. Bills not returned by council in ten days, to become laws; how authenticated by secretary of State.
4. If General Assembly adjourn before bill is returned, how it may become law; how to be authenticated.
5. Governor to transmit laws of this State, to Governors of other States, for exchange.
6. Expenses of such exchange, how paid.
7. Copies of laws published, how disposed of; what officers entitled thereto; expense of distribution, how paid.

SECTION

8. Clerks of county commissioners' courts to give receipts for laws received by them for distribution.
9. Clerk to distribute laws to persons entitled thereto.
10. County officer, on going out of office, to return copies of laws to clerk; in case of his death, his heirs, &c., to return them; penalty for neglect, and how recovered.
11. Accounts of expenditures, and titles of acts to be published with laws.
12. Journals to be distributed to counties according to population; one hundred copies to kept in secretary's office.
13. Secretary of State to distribute congressional land documents.
14. Also, acts of congress.

SECTION 1. The common law of England, so far as the same is applicable and of a general nature, and all statutes or acts of the British parliament made in aid of, and to supply the defects of the common law, prior to the fourth year of James the First, excepting the second section of the sixth chapter of forty-third Elizabeth; the eighth chapter of thirteenth Elizabeth, and ninth chapter of thirty-seventh Henry eighth; and which are of a general nature and not local to that kingdom, shall be the rule of decision, and shall be considered as of full force, until repealed by legislative authority.

SEC. 2. Whenever a bill which shall have passed both houses of the General Assembly, shall be returned by the council of revision, with objections thereto, and upon reconsideration, shall pass both houses by the constitutional majority, it shall be authenticated as having become a law, by a certificate thereon, to the following effect: "This bill having been returned by the council of revision with objections thereto, and after reconsideration, having passed both houses by the constitutional majority, it has become a law, this day of ;" which being signed by the speakers of the senate and of the house of representatives, respectively, shall be deemed a sufficient authentication thereof; whereupon, the bill shall be presented to the Governor, to be by him deposited with the laws in the office of the secretary of State.

SEC. 3. Every bill which shall have passed both houses of the General Assembly, and shall not be returned by the council of revision within ten days, having thereby become a law, shall be authenticated by the Governor, causing the fact to be certified thereon by the secretary of State, in the following form: "This bill having remained with the council of revision ten days, (Sundays excepted,) and the General Assembly being in session, it has become a law this day of ."
C. F., Secretary of State."

SEC. 4. Whenever the General Assembly shall, by their adjournment before the expiration of ten days after the passage of any bill, render the return of such

bill by the council of revision within that time impracticable, and the same shall not be returned on the first day of the next meeting of the General Assembly, and shall thereby become a law, the fact shall be authenticated in the manner provided in the preceding section.

SEC. 5. It shall be the duty of the Governor of this State, for the time being, so soon as the acts of the General Assembly of this State, after each and every session thereof, shall have been published, to transmit, free of postage, to the executive of each State and territory of the United States, and to the secretary of State of the United States, three copies of the acts of the General Assembly of Illinois, at such session, and request a like interchange by the several States: *Provided*, That when such request has heretofore been made, it shall not be the duty of the Governor again to make it.

SEC. 6. Any expense incurred by virtue of the preceding section, shall be paid out of the contingent fund, reserved in the State treasury, to be drawn by warrant from the auditor on the certificate of the Governor, from time to time, as the case shall require.

SEC. 7. The secretary of State, on the completion of the printing and binding of the acts of the General Assembly of this State, shall reserve two hundred and fifty copies thereof in his office, subject to the disposition of any future General Assembly. He shall cause to be delivered to the Governor, Lieutenant Governor, auditor of public accounts, State treasurer, each of the justices of the supreme court, attorney general, circuit attorneys, secretary of the senate and clerk of the house of representatives, engrossing and enrolling clerks of each house, one copy each. He shall transmit by some person or persons with whom he may contract for the purpose, a sufficient number of copies to the clerk of the county commissioners' court of each county, to be distributed among the different civil officers of the county and members of the General Assembly residing therein, allowing one for each probate justice, county commissioner, coroner, clerk of a court, county treasurer, sheriff, justice of the peace, county surveyor, constable, county recorder, school commissioner, and member of the General Assembly residing in the county; and there shall also be delivered to the clerk of the circuit court of each county, two copies for the use of the court, grand jury, and bar; and the surplus copies, if any, shall be by said clerk of the county commissioners' court carefully kept and preserved, to be distributed as may be hereafter directed by law; and the reasonable expenses attending such distribution shall be paid out of the State treasury.

SEC. 8. The clerks of the several county commissioners' courts, on receiving the laws for distribution as aforesaid, shall give their receipts for the same; which receipts shall be filed in the secretary's office by the person by whom the said laws were distributed, before he shall be entitled to payment for distributing the same.

SEC. 9. The clerks of the several county commissioners' courts shall, upon the request of any person who may be entitled to a copy of the laws as aforesaid, deliver to him such copy, taking his receipt for the same: but no person shall be entitled to more than one copy, although he may hold several offices.

SEC. 10. Upon the expiration of the term of service, resignation or removal from office, of any county officer, it shall be his duty to return to the clerk of the county commissioners' court of his county, for the use of his successor in office, the copy or copies of the laws of this State, received by him in pursuance of this chapter, and in case of the death of any such officer, the said copy or copies of the laws shall be returned as aforesaid, by his executors or administrators. If any.

such officer, his executors or administrators, shall refuse or neglect, for three months after the happening of such vacancy as aforesaid, to return the said copy or copies of the laws, to the clerk of the county commissioners' court as aforesaid, it shall then be the duty of said clerk to sue for the same, before some justice of the peace, and he shall recover for the use of the county, the sum of four dollars for each copy so detained, with costs of suit. No person, however, while he continues to hold any office, which entitles its incumbent to a copy of the laws, shall be required to return his copy of the same as aforesaid.

SEC. 11. There shall be added to each copy of the laws published in conformity to this chapter, an accurate account of the receipts and expenditures of the public moneys for the two years preceding the session of the General Assembly at which were passed the laws comprised in such copy. The volume hereby required to be published, shall also contain the title of every act of a private or temporary nature, passed at such session.

SEC. 12. The journals of the General Assembly shall be distributed among the several counties according to the number of white inhabitants, reserving in the office of the secretary of State one hundred copies.

SEC. 13. It shall be the duty of the secretary of State to distribute with the laws of the General Assembly, to each of the clerks of the county commissioners' courts in this State, excepting those counties to which the same shall have already been sent, one set of the documents, legislative and executive, of the Congress of the United States, in relation to the public lands, to be kept by said clerks in their offices for the use of the people of their respective counties.

SEC. 14. The secretary of State shall also send to each senatorial district in this State, to which the same shall not have already been sent, one copy of the acts of Congress, from eighteen hundred and twenty-two to the present time, to be deposited with the clerk of the county commissioners' court where the votes for said district are canvassed, for the use of the people of said district, and hereafter with each distribution of the laws of this State there shall be sent out as aforesaid, to each of said districts, one copy of the acts of Congress which may hereafter be received.

APPROVED: March 3, 1845.

CHAPTER LXIII.

LIBRARY—STATE.

SECTION

1. Books of State to be kept by secretary of State, except those kept by clerk of the supreme court.
2. Secretary to be librarian; his duties.
3. Who may take out books.
4. Librarian to keep register; how long books may be retained.

SECTION

5. Penalty for improperly retaining or injuring books; auditor to withhold pay of members of assembly, until all books are returned.
6. Fines, &c., how recovered and disposed of; entries of librarian to be evidence in suits for the recovery of penalties.

SECTION 1. The books now belonging to the State, and such as shall be hereafter purchased or received by the State, except the law books now in the custody of the clerk of the supreme court, and such additions as hereafter may be made to them, which shall remain under the direction and control of the supreme court, shall be kept in the office of the secretary of State, and shall compose the State library.

SEC. 2. The secretary of State shall be librarian, and take charge of the library and all papers, maps and charts properly belonging thereto, under such regulations as are hereinafter established, and shall take special care that none of them be lost or injured.

SEC. 3. Books may be taken from the State library by the members of the General Assembly and its officers during the session of the legislature, and at any time by the Governor and the officer of the Executive department of this State, who are required to keep their offices at the seat of government, the justices of the supreme court and attorney general: *Provided*, That no person shall be permitted to take or detain from the library more than two volumes of miscellaneous works at any one time.

SEC. 4. The librarian shall cause to be kept a register of all books issued and returned at the times they shall be so issued and returned, and none of the books except the laws, journals and reports of this State, which may be taken from the library by members of the legislature or its officers, during the session, shall be retained more than two weeks, and all the books taken by members of the General Assembly or its officers, of every kind, shall be returned at the close of the session.

SEC. 5. If any person injure or fail to return any book taken from the library, within the time prescribed in the foregoing section, he shall forfeit and pay to the librarian, for the benefit of the library, three times the value thereof, or of the set to which it belongs; and before the auditor shall issue his warrant in favor of any member or officer of the General Assembly, for his services during the session, he shall be satisfied that such member or officer has returned all books taken out of the library by him, and has settled all accounts for injuring such books or otherwise.

SEC. 6. All fines and forfeitures accruing under and by virtue of this chapter, shall be recoverable by action of debt before any justice of the peace or court having jurisdiction of the same, in the name of the people of the State of Illinois, for the use of the State library; and in all such trials, the entries of the librarian, to be made as hereinbefore described, shall be evidence of the delivery of the book or books, and of the date thereof; and it shall be his duty to carry the provisions of this chapter into execution and sue for all injuries done to the library, and for all penalties under this chapter.

APPROVED: March 3, 1845.

CHAPTER LXIV.

LICENSES.

SECTION

1. No person permitted to sell without license.
2. County commissioners' court may grant licenses.
3. Extent of such licenses.
4. If court be not in session, clerk may grant license; its provisions and time.
5. Court at next term to examine license granted by clerk.
6. Penalty for selling without license.
7. Preceding section not to apply to certain persons.
8. What trade with Indians prohibited.
9. Groceries, on what conditions licensed.
10. Court may reject or grant application.
11. Court may revoke license for violation of law.
12. Grocery keeper not to sell liquors in more than one place.
13. What deemed a grocery.
14. Authorities of incorporated towns, have exclusive control of licenses.
15. Penalty for selling liquor without a license; *proviso* concerning fine.
16. Penalty for selling liquor to Indians.

SECTION

17. Accounts of over fifty cents for liquor to be void, if made for liquor sold in less quantities than one quart.
18. Grocery keeper punished for keeping disorderly house.
19. General provisions against selling spirituous liquors.
20. Penalty for selling to minors.
21. Penalty for selling to servants without consent of masters.
22. Agents of foreign insurance companies to notify clerk of county commissioners' court of their appointment.
23. Such agents to pay tax of three per cent. on premiums; money thus collected, how disposed of.
24. Penalty if agent fail to pay.
25. Officers collecting fines to pay money into county treasury.
26. Prosecutors may be witnesses.
27. Penalties, how collected and disposed of.
28. Appeals and writs of error allowed.

SECTION 1. No merchant, auctioneer, peddler or other person or persons, company or corporation, shall be permitted to sell, vend or retail, either at private sale or public auction, any goods, wares or merchandize, without having first obtained a license for that purpose as hereinafter provided.

SEC. 2. The county commissioners' courts of the respective counties in this State shall have power to grant such licenses, on the payment into the county treasury by the applicant for such license, of a sum to be assessed by said court, not less than five, nor more than one hundred dollars.

SEC. 3. Such license shall authorize the person receiving it, to vend, sell and retail goods, wares and merchandize within said county for the space of one year, from the time of granting the same.

SEC. 4. If the county commissioners' court shall not be in session when the application is made, the clerk may grant a written permission to the applicant to vend, sell and retail goods, wares and merchandize until the end of the next term of the court, or if the court take no action upon the case, for the term provided in the third section of this chapter. At the time of granting such permission the clerk may assess the amount to be paid by the applicant, which shall be paid into the county treasury accordingly.

SEC. 5. When a permission shall be granted by the clerk in vacation as aforesaid, it shall be the duty of the county commissioners' court, at their next term thereafter, to examine such permit, and if approved to proceed forthwith to assess the amount to be paid for license, to be paid as in the case of original applications. But if the court do not approve the same, the license shall be vacated, and no other sum shall be required to be paid, than that fixed by the clerk.

SEC. 6. If any person or persons, company or corporation shall, directly or indirectly, keep a store, or sell, vend or retail any goods, wares or merchandize, without being first duly authorized by license or permit as aforesaid, such person or persons, company or corporation so offending, shall forfeit and pay any sum, not exceeding one hundred, nor less than ten dollars.

SEC. 7. The preceding section shall not be construed to extend to the sale of goods, wares and merchandize, by persons who are not merchants, auctioneers, grocers, grocery keepers or peddlers, nor to merchants who pay an annual tax upon merchandize, assessed according to the revenue laws of this State, nor to persons who sell commodities manufactured by themselves in this State.

SEC. 8. No citizen of this State, or other person or persons, shall purchase of, or otherwise trade or barter with any Indian or Indians in this State, for any fire arms, knives, tomahawks, blankets or horses, under the penalty of not less than twenty dollars nor more than one hundred dollars for every such offence, recoverable before any court of competent jurisdiction: the one-half part thereof for the use of the county in which such offence is committed, and the other half to the person informing.

SEC. 9. County commissioners' courts may grant licenses to keep groceries upon the following conditions, to-wit: First, the applicant shall pay into the county treasury, for the privilege granted, a sum, not exceeding three hundred dollars nor less than twenty-five dollars, in the discretion of the court; Second, the applicant shall execute bond, in the penalty of five hundred dollars, with one or more securities, to be approved by the court, conditioned that the applicant will keep an orderly house, and that he will not permit any unlawful gaming or riotous conduct in his house.

SEC. 10. Upon applications for licenses to keep groceries, the court may reject or grant the same in their discretion.

SEC. 11. County commissioners' courts shall have power, upon complaint being made to them, to revoke any license granted to keep a grocery, whenever they may be satisfied that the privileges granted have been abused, or that the person to whom the license was granted, has violated the law.

SEC. 12. Licenses granted to keep groceries, shall not authorize the person obtaining the license, to vend or sell spirituous or vinous liquors in more than one place or house, and every license shall describe the house and place intended to be occupied.

SEC. 13. A grocery shall be deemed to include all houses and places where spirituous or vinous liquors are retailed by less quantities than one quart.

SEC. 14. The president and trustees of incorporated towns, shall have the exclusive privilege of granting licenses to groceries within their incorporated limits; and all sums of money which may be received for licenses granted as aforesaid, shall be paid into the county treasury.

SEC. 15. Every person, not having a legal license to keep a grocery, who shall barter, sell, exchange or otherwise dispose of, for his gain or benefit, any vinous, spirituous or mixed liquors in less quantities than one quart, or shall permit the same to be done on his premises, for his gain and benefit, shall forfeit and pay the sum of ten dollars for each offence, together with costs of suit, one-half to any person who shall give information, the other half to be paid into the county treasury: *Provided*, That a conviction under the one hundred and thirty-second section of chapter thirty of the Revised Statutes, shall bar any suit under this section for the same offence; and judgment under the provisions of this section shall be an effectual bar to a prosecution under the provisions of the said one hundred and thirty-second section.

SEC. 16. No grocer or retailer of spirituous liquors, or other person or persons, shall sell, exchange, or otherwise deliver to any Indian or Indians, within the boundaries of this State, any spirituous liquors, under the penalty of twenty dollars for every such offence, the one-half thereof for the use of the county wherein the offence is committed, and the other half for the person informing.

SEC. 17. All accounts of grocers or other retailers of spirituous liquors in this State, for liquors by them or their agents retailed, sold or delivered, for a greater or higher amount than fifty cents, shall be void; and no court shall entertain jurisdiction of any account of any grocer or other retailer as aforesaid, in which there shall be more than fifty cents charged for liquor; and if any grocer or retailer of spirituous liquors, shall sue for or otherwise claim of or from any one person in this State, a greater or higher amount than fifty cents for spirituous liquors, the claim shall be void: *Provided*, That nothing in this section contained, shall prevent any grocer, retailer or other person as aforesaid, from selling spirituous liquors larger in quantity than one quart, and suing for and recovering pay for the same.

SEC. 18. Every person licensed to keep a grocery who shall knowingly suffer any disorder, drunkenness, or unlawful games whatever, in such his, her or their houses, his, her or their license or licenses shall be suppressed by the county commissioners' court.

SEC. 19. No person or persons other than such as are or shall be qualified so to do by this law, shall presume, under any color of pretence, to sell, barter with or deliver any wine, rum, brandy or other spirits, or any mixed or strong liquors, to be used, or within his, her or their houses, yards or sheds, or to be with his, her or their knowledge, privity or consent, used or drank in any shelter, places or woods, near or adjacent to them, by companies of servants, slaves or others; nor to retail or sell to any person or persons any rum, brandy or other spirits, by less quantity or measure than one quart, the same liquors being respectively delivered to one person, and at one time, without any collusion or fraud, contrary to the true intent and meaning of this law; and any person offending against the provisions of this section, shall be subject to all the penalties which are herein provided against selling without a license.

SEC. 20. If any grocery keeper or other retailer of liquors, shall receive, harbor, entertain or trust any minor or any servant, knowing them or either of them to be such, or after having been cautioned or warned to the contrary by the parent, guardian, master or mistress of such minor or servant, in the presence of one or more credible witnesses, such grocery keeper or retailer of liquors so offending shall, for the first or second offence, being duly convicted thereof, forfeit and pay the sum of three dollars for every such offence, over and above the loss and forfeiture of any debt such minor or servant shall or may contract for liquors or entertainment; and upon conviction for the third offence, the license obtained by such offender is hereby declared null and void; and the person so repeatedly offending, shall forfeit and pay the sum of twelve dollars, on conviction by indictment, to the use of the county, and be forever after incapable of keeping a grocery or of retailing liquor within the State.

SEC. 21. No person shall, by any means, presume to furnish, supply or sell to any bond servant or slave, any rum, brandy, spirits or any other strong liquors, mixed or unmixed, either within or without doors, nor shall receive, harbor or entertain any slave or servant in or about his, her or their houses, without special license had and obtained under the hand of such master or mistress of such slave or bond servant respectively, under the penalty, for the first offence, of three dollars,

and for every succeeding offence, four dollars, to be recovered on the proof of one or more credible witnesses, or upon the view of any justice within the respective counties where the act shall be committed.

SEC. 22. All agents of foreign insurance companies shall, upon their acceptance of such agencies, signify the same in writing, to the clerk of the county commissioners' court of their respective counties, which notice shall be filed by the clerk in his office, which shall entitle the agent to grant policies of insurance, according to the laws governing the company of such agency.

SEC. 23. The said agent or agents shall be required to pay over to the clerk of the county commissioners' court, three per cent. on the amount of premiums charged by him on all policies by him issued; and the said clerk shall give to the agent, duplicate receipts, one of which the clerk shall retain; and the said clerk shall enter the amount so received in a book kept by him for that purpose, designating the time when and from what agent the same was received; and the said clerk shall, on the first day of January and the first day of July annually, (if he has in his hands any funds so received) make out an abstract of the same, and shall forward said abstract, together with the money on hand, to the treasurer of the State of Illinois, who shall receive the same and enter the amount so received in a book kept by him for that purpose, with the time when and from what clerk and county the same was received; and the moneys so received shall be considered as revenue to the State, and by the treasurer paid out as such.

SEC. 24. Any agent failing to pay over to the clerk of the county commissioners' court, the per cent. as directed in this chapter, shall subject himself to be fined double the amount of the premium upon which he failed to pay over the per cent. as directed in this chapter; one-half to the informer, and the other half to be paid over to the clerk of the county commissioners' court, and paid over by him to the State treasurer, in like manner as the per cent. in this chapter is directed to be paid.

SEC. 25. Every magistrate or other officer to whom any fines or penalties imposed by this chapter, shall be paid for the use of the county, shall, at the next term of the county commissioners' court, make a report of the amount thereof, and pay the same into the county treasury.

SEC. 26. Persons prosecuting or giving information under the provisions of this chapter, may be competent witnesses on the trial, notwithstanding their interest in the penalty to be recovered.

SEC. 27. Penalties incurred by a violation of the provisions of this chapter may be recovered by action of debt by summons in the name of the people of the State of Illinois, for the use of the proper county, before any justice of the peace, or court of competent jurisdiction of the proper county, upon complaint of any citizen of such county; and any justice of the peace or other officer into whose hands such penalty shall properly come, shall, unless otherwise required by law, make report of such recovery to the county commissioners' court, and at its next regular term succeeding the collection of such penalty, pay into the county treasury, the part thereof which shall be payable to such county, and the remainder to the person informing or prosecuting.

SEC. 28. Appeals and writs of *certiorari* may be taken from proceedings had under the provisions of this chapter, as in other cases.

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CHAPTER LXV.

LIENS.

SECTION

1. Person building on land or town lot, to have lien on the same for his labor or materials furnished.
2. Extent of lien; limitation as to time.
3. Claimant to file his petition in circuit court, for an order of sale and payment.
4. What facts petition shall contain; summons to issue.
5. Court may permit amendments, and exercise general chancery jurisdiction.
6. Suits to be placed on the common law docket; summons, how served and returned.
7. Answer to be on oath; issue, how made up and tried.
8. When defendant to answer; testimony.
9. Publication, when sufficient.
10. All interested persons, may become parties to suit.
11. No preference given to prior contract creditor.
12. Court shall direct disposition of proceeds.
13. When contractor is prevented by default of owner of land, from fulfilling his contract, he may recover his proper proportion of the contract price.
14. Premises to be divided, if practicable.

SECTION

15. Creditors whose claims are not due, may become parties, and receive proportion of assets.
16. Order in which different claims may be tried, and rights of respective claimant's.
17. Any estate in the lands improved may be sold to satisfy lien.
18. Suits may be maintained by or against heirs, &c.
19. Claimants may contest each other's rights; how such contests to be tried.
20. Subsequent incumbrance not to affect lien; prior incumbrance to hold only to the extent of value of land before being improved.
21. Who considered parties in interest.
22. Creditors may contest validity of former incumbrances.
23. Chancery rules to be observed, so far as applicable.
24. Suit to enforce lien to be commenced in six months after payment due, or not to affect other creditors.
25. Right of action at law not affected.
26. Money arising from sale, how distributed; deficiency, how made up; excess, how applied.
27. Costs, how taxed and apportioned.

SECTION 1. Any person who shall, by contract with the owner of any piece of land or town lot, furnish labor or materials for erecting or repairing any building, or the appurtenances of any building on such land or lot, shall have a lien upon the whole tract of land or town lot, in the manner herein provided, for the amount due to him for such labor or materials.

SEC. 2. The lien shall extend to all work done and materials furnished under the provisions of the contract, whether the kind or quantity of the work, or amount to be paid, be specified or not: *Provided*, That the time of completing the contract shall not be extended for a longer period than three years, nor the time of payment beyond the period of one year, for the time stipulated for the completion thereof.

SEC. 3. When any sum due by such contract shall remain unpaid after the same is payable, the creditor may, upon bill or petition to the circuit court of the county in which the land or lot lies, obtain an order for the sale thereof, and for applying the proceeds of such sale to the discharge of his demand; and the filing of the bill or petition in the clerk's office, and suing out a summons thereon, shall be deemed the commencement of the suit.

SEC. 4. The bill or petition shall contain a brief statement of the contract on which it is founded, and of the amount due thereon, with a description of the premises which are subject to the lien, and all other material facts and circumstances necessary to a full understanding of the rights of the parties, and shall be considered as the foundation of the plaintiff's action; and upon the filing of which with the clerk,

a summons shall issue thereon against all persons made parties as is required upon filing bills in chancery.

SEC. 5. For the purpose of bringing all parties in interest before the court, the court shall have power to permit amendments to any part of the pleadings, and to issue process, make all orders requiring parties to appear, and requiring notice to be given by publication in newspapers, that are or may be authorized in proceedings in chancery; and the court shall have the same power and jurisdiction over the parties and subject that are or may be conferred upon courts in chancery in respect to proceedings before that court.

SEC. 6. Suits instituted under the provisions of this chapter, shall be placed upon the common law docket, and shall stand for trial at the term of the court to which the summons is made returnable. The summons shall be served by the sheriff as other process; but if not served ten days before the return day thereof, the cause shall be continued, unless the parties agree to a trial at that term of the court.

SEC. 7. Defendants, in proceedings under the provisions of this chapter, shall answer the bill or petition under oath, and the plaintiff shall except or reply to the answer as though the proceeding was in chancery; the answer shall be regarded as the plea of the defendant, and by the replication thereto, an issue or issues shall be formed, which shall be tried by the court or by a jury under the direction of the court, as the court may direct or the parties agree.

SEC. 8. Every defendant served with process ten days before the return day thereof, shall answer the bill or petition on or before the day on which the cause shall be set for trial on the docket, and the issue or issues in the cause shall be made up under the direction of the court, and oral testimony shall be received as in cases at law.

SEC. 9. Notice given to parties by publication in newspapers, under the direction of the court, shall be equivalent to personal service of such notice.

SEC. 10. In proceedings under this chapter, all persons interested in the subject matter of the suit, or in the premises intended to be sold, may, on application to the court wherein the suit is pending, become parties at any time before final judgment.

SEC. 11. Upon questions arising between different creditors, no preference shall be given to him whose contract was first made.

SEC. 12. Upon the trial of causes under the provisions of this chapter, the court shall ascertain the amount due each creditor, and shall direct the application of the proceeds of sales to be made to each in proportion to their several amounts.

SEC. 13. When the owner of the land shall have failed to perform his part of the contract, and by reason thereof the other party shall, without his own default, have been prevented from performing his part, he shall be entitled to a reasonable compensation for as much thereof, as he has performed in proportion to the price stipulated for the whole, and the court shall adjust his claim accordingly.

SEC. 14. If any part of the premises can be separated from the residue, and sold without damage to the whole, and if the value thereof should be sufficient to satisfy all the claims proved in the cause, the court may order a sale of that part.

SEC. 15. Parties entitled to liens under the provisions of this chapter, whose claims are not due or payable at the time of the commencement of suit by any other party, shall be permitted to become parties to the suit, and their claims shall be allowed, subject to a reduction of interest from the date of judgment to the time such claim is due or payable.

SEC. 16. In cases under the provisions of this chapter, where there are several claimants, the issue of law and fact, or either, may be tried separately, and in no case shall the want of preparation for trial to one claim, delay the trial in respect to others ; but trials shall be had upon issues between such parties as are prepared, without reference to issues between other parties ; and when one creditor shall have obtained a verdict or judgment for the amount due, the court may order a sale of the premises on which the lien operates, or a part thereof, so as to satisfy the judgment : *Provided*, That the court may, for good causes shown, delay making any order of sale until the rights of all parties in interest shall be ascertained and settled by the court.

SEC. 17. If the person who procures work to be done, or materials furnished, has an estate for life only, or any other estate less than a fee simple in the land or lot on which the work is done, or materials furnished, or if such land or lot, at the time of making the contract, is mortgaged, or under any other incumbrance, the person who procures the work or materials, shall nevertheless be considered as the owner within the meaning of this chapter, to the extent of his right and interest in the premises ; and the lien herein provided for, shall bind his whole estate and interest therein in like manner as a mortgage would have done ; and the creditor may cause the right of redemption, or whatever other right or estate such owner had in the land at the time of making the contract, to be sold, and the proceeds of sale applied according to the provisions of this chapter.

SEC. 18. Suits may be instituted under the provisions of this chapter in favor of administrators or executors, and may be maintained against the representatives in interest of those against whom the cause of action accrued ; and in suits instituted under the provisions of this chapter, the representatives of any party who may die pending the suit, shall be made parties as though it were a suit in chancery.

SEC. 19. Upon proceedings under the provisions of this chapter, parties claiming may contest each other's rights as well with respect to amount due, as with respect to their right to the benefit of the lien hereby created ; and upon all questions made by parties, the court shall require issues of law or fact to be formed, so as to bring about a speedy decision thereof.

SEC. 20. No incumbrance upon land created before or after the making of a contract under the provisions of this chapter, shall operate upon the building erected or materials furnished, until the lien in favor of the person doing the work or furnishing the materials shall have been satisfied ; and upon questions arising between previous incumbrances and creditors, under the provisions of this chapter, the previous incumbrance shall be preferred to the extent of the value of the land at the time of making the contract, and the court shall ascertain by jury or otherwise, as the case may require, what proportion of the proceeds of any sale shall be paid to the several parties in interest.

SEC. 21. Parties in interest, within the meaning of this chapter, shall include all persons who may have any legal or equitable claim to lands or lots upon which a lien may be attempted to be enforced under the provisions of this chapter.

SEC. 22. Creditors who file bills or petitions under the provisions of this chapter, may contest the validity of incumbrances, as well in regard to amount as to their justice ; and any incumbrance, whether by mortgage, judgment or otherwise, charged and shown to be fraudulent in respect to such creditor, or in respect to creditors generally, may be set aside by the court, and the premises made subject to the claim of the creditor freed and discharged from such fraudulent incumbrance.

SEC. 23. In proceedings under the provisions of this chapter, the courts are vested with all the powers of courts of chancery, and shall be governed by the rules of proceeding and decision in these courts, so far as that power may be necessary to carry into full and complete effect the provisions hereof, and so far as those rules of proceeding and decision are applicable to cases and questions presented for adjudication and decision.

SEC. 24. No creditor shall be allowed to enforce the lien created under the provisions of this chapter, as against or to the prejudice of any other creditor or any incumbrance, unless suit be instituted to enforce such lien, within six months after the last payment, for labor or materials, shall have become due and payable.

SEC. 25. Nothing contained in this chapter, shall be construed to prevent any creditor from maintaining an action at law upon his contract, in like manner as if he had no lien for the security of his debt.

SEC. 26. If, upon making sale of any premises under this chapter, the proceeds of such shall not be sufficient to pay the claims of all parties, according to their rights, the judgment shall be credited by the amount of such sale, and execution may issue in favor of any creditor, whose claim is not satisfied, for the balance due, as upon a judgment in actions of debt or assumpsit; and in case of excess of sales over the amount of judgment, such excess shall be paid to the owner of the land, or to the person who may be entitled to the same, under the direction of the court.

SEC. 27. The costs of proceeding under the provisions of this chapter, as between creditors claiming liens and the person against whom the lien is intended to be enforced, shall abide the event of the suit; and the costs, as between creditors aforesaid, in contests relative to each other's claims, shall be subject to the order of the court, and the same rule shall prevail in respect to costs growing out of proceedings against and between incumbrancers.

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CHAPTER LXVI.

LIMITATIONS.

SECTION

1. What actions limited to five years.
2. What actions limited to two years.
3. Actions for words spoken, limited to one year; for malicious prosecution to two years.
4. What actions limited to sixteen years; provisions concerning them.
5. Judgments in courts of record, may be revived by *scire facias* within twenty years.
6. Persons having right of entry, to enter within twenty years.
7. Real, possessory, mixed action, &c., to be brought in twenty years.
8. What actions relating to real estate, must be

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- brought in seven years; provisions in such cases.
9. Possession, what constitutes.
10. Right of heirs, &c., secured.
11. Persons having certain rights respecting real estate, to make entry within seven years.
12. In case of appeal, writ of error, non-suit, &c., how time to be computed.
13. If defendant be absent from State, time, how to run.
14. If Person having right of entry, be a minor, insane, &c., how time to run.

SECTION 1. All actions of trespass *quare clausum fregit*, all actions of trespass, detinue, trover and replevin, for taking away goods and chattels, all actions for

arrearages of rent, due on a parol demise, and all actions of account, and upon the case, except actions for slander, and except also, actions for malicious prosecution, and such actions as concern the trade of merchandize, between merchant and merchant, their factors or agents, shall be commenced within five years next after the cause of such actions shall have accrued, and not after.

SEC. 2. All actions of trespass for assault, battery, wounding and imprisonment, or any of them, shall be commenced within two years next after the cause of such actions shall have accrued, and not after.

SEC. 3. Every action upon the case for words, shall be commenced within one year next after the words spoken, and not after; and every action for malicious prosecution shall be commenced within two years next after the cause of action shall have accrued, and not after.

SEC. 4. Every action of debt or covenant, for rent or arrearages of rent, founded upon any lease under seal, and every action of debt or covenant, founded upon any single or penal bill, promissory note, or writing obligatory, for the direct payment of money, or the delivery of property, or the performance of covenants, or upon any award under the hands and seals of arbitrators, for the payment of money only, shall be commenced within sixteen years after the cause of such action shall have accrued, and not after; but if any payment shall have been made on any such lease, single or penal bill, promissory note, writing obligatory or award, within or after the said period of sixteen years, then an action instituted on such lease, single or penal bill, promissory note, writing obligatory or award, within sixteen years after such payment, shall be good and effectual in law, and not after.

SEC. 5. Judgment in any court of record in this State, may be revived by *scire facias*, or an action of debt may be brought thereon, within twenty years next after the date of such judgment, and not after.

SEC. 6. No person who now hath or hereafter may have any right of entry into any lands, tenements or hereditaments, shall make an entry therein, but within twenty years next after such right shall have accrued, and such person shall be barred from any entry afterwards.

SEC. 7. Every real, possessory, ancestral or mixed action, or writ of right, brought for the recovery of any lands, tenements or hereditaments, shall be brought within twenty years next after the right or title thereto, or cause of such action accrued, and not after.

SEC. 8. Every real, possessory, ancestral or mixed action, or writ of right, brought for the recovery of any lands, tenements or hereditaments of which any person may be possessed by actual residence thereon, having a connected title in law or equity, deducible of record, from this State or the United States, or from any public officer or other person authorized by the laws of this State, to sell such land for the non-payment of taxes, or from any sheriff, marshal or other person authorized to sell such land on execution, or under any order, judgment or decree of any court of record, shall be brought within seven years next after possession being taken as aforesaid; but when the possessor shall acquire such title after taking such possession, the limitation shall begin to run from the time of acquiring title.

SEC. 9. Possession, as described in the preceding section, to bar the rights, actions and suits aforesaid, shall have been continued in manner aforesaid, for the term of seven years next preceding the time of asserting the right of entry, or the commencement of any such suit or action.

SEC. 10. The heirs, devisees and assigns of the person having such possession and title, shall have the same benefit of this chapter as the person from whom the possession was derived, could have had by virtue of such possession.

SEC. 11. No person, who has or may have any right of entry into any lands, tenements or hereditaments, of which any person may be possessed by actual residence thereon, having a connected title in law or equity, deducible of record, from this State or the United States, or from any public officer or other person authorized by the laws of this State to sell such lands for non-payment of taxes, or from any sheriff, marshal or other person authorized to sell such land on execution, or under any order, judgment or decree of any court of record, shall make any entry therein, except within seven years from the time of such possession being taken; but when the possessor shall acquire such title after the time of taking such possession, the limitation shall begin to run from the time of acquiring title.

SEC. 12. If, in any of the said actions specified in any of the preceding sections of this chapter, judgment be given for the plaintiff, and the same be reversed by writ of error or upon appeal, or if a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff; or if the plaintiff be non-suited, then, if the time limited for bringing such action shall have expired during the pendency of such suit, the said plaintiff, his or her heirs, executors or administrators, as the case shall require, may commence a new action within one year after such judgment reversed or given against the plaintiff, and not after.

SEC. 13. If any person or persons against whom there is or shall be any cause of action, as is specified in the preceding sections of this chapter, except real or possessory actions, shall be out of this State at the time of the cause of such action accruing, or any time during which a suit might be sustained on such cause of action, then the person or persons who shall be entitled to such action, shall be at liberty to bring the same against such person or persons, after his, her or their return to this State, and the time of such person's absence shall not be accounted or taken as part of the time limited by this chapter.

SEC. 14. In all the foregoing cases in which the person or persons who shall have right of entry, title or cause of action is, are or shall be, at the time of such right of entry, title or cause of action, under the age of twenty-one years, insane, or *feme covert*, such person or persons may make such entry or institute such action, so that the same be done within such time as is within the different sections of this chapter limited, after his or her becoming of full age, sane or *feme sole*.

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CHAPTER LXVII.

MANDAMUS.

SECTION

1. Circuit courts may issue writs of *mandamus*; appeals may be taken; writs of error may be prosecuted; allowance of writ to stay proceedings.
2. When writ issued, duty of officer.
3. Facts stated in return, may be traversed; person making return, may take issue; subsequent proceedings; if verdict be against per-

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- son returning writ, damages, how assessed; peremptory *mandamus* may be granted; if judgment be for defendant, he may recover costs.
4. Recovery of damages to bar other action for same matter.
5. Court issuing writ, &c., to give sufficient time for pleading, making return, &c.

SECTION 1. The respective circuit courts in this State shall have power to issue writs of *mandamus*. Appeals may be taken from the decision of the said courts, upon such terms as the said circuit courts shall prescribe; or, writs of error may be prosecuted, whenever the supreme court or any of the judges thereof in vacation, upon being presented with a copy of the record, shall certify that there is reasonable cause for the bringing of such writ; and the said supreme court, or judge in vacation, may impose such terms and conditions upon the party wishing to prosecute such writ of error, as the said court or judge may deem reasonable. The allowance of a writ of error shall operate, after notice thereof, as a stay of proceedings in the circuit court until the determination of such writ of error.

SEC. 2. When any writ of *mandamus* shall be issued out of any court of this State, directed and delivered to any person or persons, who, by the laws of this State, are required to make return of such writ, such person or persons shall make his or their return to the first writ of *mandamus*.

SEC. 3. When any writ of *mandamus* shall issue out of any court of this State, and return shall be made thereunto, it shall be lawful for the person or persons suing or prosecuting such writ, to plead to or traverse all or any of the material facts contained in such return; to which the person or persons making such returns shall reply, take issue or demur, and such further proceedings shall be had therein, and in such manner, for the determination thereof, as might have been had if the person or persons suing out such writ had brought his or their action on the case for a false return. If any issue shall be joined upon such proceedings, the person or persons suing such writ, shall and may try the same in such place, as an issue joined on such action on the case should or might have been tried. In case a verdict shall be found for the person or persons suing such writ, or judgment given for him or them upon a demurrer, or by *nihil dicit*, or for want of a replication or other pleading, he or they shall recover his or their damages and costs, in such manner as he or they might have done in an action on the case as aforesaid; such damages and costs shall and may be levied by execution, as in other cases, and a peremptory writ of *mandamus* shall be granted without delay for him or them for whom judgment shall be given, as might have been if such return had been adjudged insufficient. In case judgment shall be given for the person or persons making

such return to such writ, he or they shall recover his or their costs of suit, to be levied in manner aforesaid.

SEC. 4. If any damages shall be recovered by virtue of the provisions of this chapter, against any person or persons making such returns to such writ as aforesaid, he or they shall not be liable to be sued in any other action or suit for the making of such return, any law, usage or custom to the contrary notwithstanding.

SEC. 5. It shall and may be lawful to and for the court issuing any writ of *mandamus*, to allow to such person or persons respectively, to whom such writ shall be directed, or to the person or persons who shall sue or prosecute the same, such convenient time, respectively, to make return, plead, reply, rejoin or demur, as to the court shall seem just and reasonable, anything herein contained to the contrary notwithstanding.

APPROVED: March 3, 1845.

CHAPTER LXVIII.

MARKS AND BRANDS.

SECTION

1. Every person having stock, may have separate ear mark, which shall be recorded.
2. Clerk of county commissioners' court to keep record of marks; his fees.

SECTION

3. How disputes to be settled.
4. Persons purchasing stock, may change marks in presence of witnesses.

SECTION 1. Every person in this State, who hath cattle, horses, hogs, sheep or goats, may have an ear mark and brand, and but one of each, which shall be different from the ear mark and brand of his neighbors; which ear mark and brand may be recorded by the clerk of the county court where such cattle, horses, hogs, sheep or goats shall be.

SEC. 2. It shall be the duty of the county clerks, in the respective counties of this State, to keep a well bound book, in which they shall record the marks and brands of each individual who may apply to them for that purpose; for which they shall be entitled to demand and receive the sum of twelve and a half cents; and the book in which the same are recorded, shall be open to the examination of every citizen of the county at all reasonable office hours, free of charge.

SEC. 3. If any dispute shall arise about any ear mark or brand, it shall be decided by reference to the book of marks and brands kept by the county clerk, but such book shall be *prima facie* evidence only.

SEC. 4. Any person purchasing or acquiring horses, cattle, hogs, sheep or goats, when he brands or marks the same in his brand or mark, after the acquisition of the same, may do it in the presence of one or more of his neighbors, who are authorized to certify to the fact of the marking or branding being done, when done, and in what brand or mark the same were, previously, and in what brand or mark they were re-branded or re-marked. Such certificate shall not be deemed evidence of property in the animal branded, but only *prima facie* evidence of the facts therein certified to.

APPROVED: March 3, 1845.

CHAPTER LXIX.

MARRIAGES.

SECTION

1. At what age persons may contract marriage; when consent of parents necessary.
2. Persons of different color not permitted to contract marriage; penalty for; clerk issuing license to such persons, and officers solemnizing their marriage, how punished.
3. Who, in religious societies, may solemnize marriages according to their custom.
4. What declaration of parties sufficient; before whom such declaration may be made.
5. Person celebrating marriage, to file certificate thereof in office of clerk of county commissioners' court.

SECTION

6. Clerk to keep registry thereof; copies to be evidence.
7. Clerk refusing to register marriage, how punished.
8. Penalty for neglecting to file certificate; penalty for celebrating marriage contrary to law.
9. Two weeks' publication, or a license, required before marriage.
10. License, when necessary; its contents; consent of parents and guardians, when necessary; penalty if clerk issue license to minors without such consent; how sued for and recovered; how fact of age ascertained.

SECTION 1. All male persons over the age of seventeen years, and females over the age of fourteen years, may contract and be joined in marriage: *Provided*, In all cases where either party is a minor, the consent of parents or guardians be first had, as is hereinafter required.

SEC. 2. No person of color, negro or mulatto, of either sex, shall be joined in marriage with any white person, male or female, in this State; and all marriages or marriage contracts, entered into between such colored person and white person, shall be null and void in law; and any person so marrying or contracting to marry, shall be liable to pay a fine, be whipped in not exceeding thirty-nine lashes, and be imprisoned, not less than one year; and shall be held to answer in no other than a criminal prosecution, by information or indictment. And any clerk who shall knowingly issue a license to any such colored person, negro or mulatto, or to any white person to be joined to a negro or mulatto, in manner aforesaid, or if any officer or person authorized to solemnize marriages in this State, shall join any such colored person, negro or mulatto in marriage with a white person, such magistrate or other person so offending as aforesaid, on conviction thereof, shall be fined, in a sum not less than two hundred dollars, to be sued for and recovered in any court of record in this State, the one-half for the use of the county in which said suit is brought, and the other half to the person suing for the same; and thereafter be ineligible to any office in this State.

SEC. 3. All persons belonging to any religious society, church or denomination, may celebrate their marriage according to the rules and principles of such religious society, church or denomination; and a certificate of such marriage, signed by the regular minister, or if there be no minister, then by the clerk of such religious society, church or denomination, registered as hereinafter directed, shall be evidence of such marriage.

SEC. 4. Any persons wishing to marry, or be joined in marriage, may go before any regular minister of the gospel, authorized to marry, by the custom of the church or society to which he belongs, any justice of the supreme court, judge of any inferior court, or justice of the peace, and celebrate or declare their marriage, in such manner and form as shall be most agreeable.

SEC. 5. Any minister of the gospel, justice of the supreme court, judge or justice of the peace, who shall celebrate any marriage, shall make a certificate of such marriage, and return the same, with the license, to the clerk of the county commissioners' court, who issued such license, within thirty days after solemnizing such marriage.

SEC. 6. The clerk of the county commissioners' court, after receiving such certificate, shall make a registry thereof, in a book to be kept by him for that purpose only; which registry shall contain the christian and surnames of both the parties, the time of their marriage, and the name of the person certifying the same: and said clerk shall, at the same time, indorse on such certificate, that the same is registered, and the time when; which certificate shall be carefully filed and preserved; and the same, or a certified copy of the registry thereof, shall be evidence of the marriage of the parties.

SEC. 7. If any clerk shall, for more than one month, refuse or neglect to register any marriage certificate, which has been, or may hereafter be delivered to him for that purpose, (his fee therefor being paid,) he shall be liable to be removed from office, and shall moreover pay the sum of one hundred dollars, to the use of the party injured, to be recovered by action of debt in any court having cognizance of the same.

SEC. 8. If any minister, justice of the supreme court, judge or justice of the peace, having solemnized a marriage; or clerk of any religious society, as the case may be, shall not make return of a certificate of the same, as required, within the time limited, to the clerk of the commissioners' court of the county in which such marriage was solemnized, he shall forfeit and pay one hundred dollars for each case so neglected, to go to the use of the county, to be recovered by indictment. And if any minister of the gospel, justice of the supreme court, judge or any other officer or person, except as hereinbefore excepted, shall solemnize and join in marriage any couple without a license as aforesaid, he shall, for every such offence, forfeit and pay one hundred dollars, to the use of the county, to be recovered by indictment.

SEC. 9. No persons shall be joined in marriage as aforesaid, unless their intention to marry, shall have been published at least two weeks previous to such marriage, in the church or congregation to which the parties, or one of them belong; or unless such persons have obtained a license, as herein provided.

SEC. 10. In all cases when publication of such intention to marry has not been made, as before described, the parties wishing to marry, shall obtain a license from the clerk of the county commissioners' court of the county where such marriage is to take place; which license shall authorize any regular minister of the gospel, authorized to marry by the church or society to which he belongs, any justice of the supreme court, judge or justice of the peace, to celebrate and certify such marriage; but no such license shall be granted for the marriage of any male under twenty-one years of age, or female under the age of eighteen years, without the consent of his or her father, or if he be dead or incapable, of his or her mother or guardian, to be noted in such license. And if any clerk shall issue a license for the marriage of any such minor, without consent as aforesaid, he shall forfeit and pay the sum of three hundred dollars, to the use of such father, mother or guardian, to be sued for and recovered in any court having cognizance thereof; and for the purpose of ascertaining the age of the parties, such clerk is hereby authorized to examine either party, or other witness, on oath.

APPROVED: March 3, 1845.

CHAPTER LXX.

MILITIA.

SECTION

1. Who shall be enrolled in the militia; when, and how enrolled; how to be armed; officers how to be armed; arms, &c., exempt from execution.
2. Militia divided into divisions, brigades, regiments, battalions and companies; divisions, &c., particularly defined.
3. Militia of the State, how officered.
4. What officers appointed by the Governor; their rank.
5. Rank, how assigned; numbers, how fixed.
6. Mode of proceeding in creating or changing brigade, districts or dividing regiments; changes not to disturb commissions of officers; changing regimental districts, how accomplished.
7. Who may be officers of militia; oath to be taken; officer elected, failing to take oath, to be displaced; who may administer oath.
8. One company of artillery, and one of cavalry to each regiment, and one of grenadiers, &c.; *pro-visto*; as to number composing such company.
9. Independent companies, how armed and equipped; of what number of officers and privates they shall consist; may choose their own uniform.
10. Term and conditions of service of independent companies.
11. Resignations, how made; how received; how vacancies, thus occasioned, may be filled.
12. Manner of voting in elections of officers; votes, how recorded; returns, how made; if election be contested, to whom transmitted.
13. Contested elections, how decided.
14. Officers appointed to try contested election to be notified; fined for failure to attend.
15. What officers shall attend at contested elections, in the various grades of officers.
16. How decision in contested case certified and returned; successful party to be commissioned.
17. Witnesses may be examined, delinquent witnesses, how punished.
18. Oath of officers, form of.
19. Color bearers to be appointed to each battalion.
20. Officers serving seven years, being equipped, to be exempt from militia duty.
21. If company be disorganized by failure to elect officers, to be enrolled in next nearest company.
22. Volunteer companies, when to equip.
23. Fine to be proportioned to delinquency of officer.
24. Cause of resignations, how noted.
25. Regimental musters to be held once in each year.
26. Battalion muster once in each year.
27. Company musters, when held; notices.
28. Regimental musters, by whom notice of to be given.
29. Commanders of regiments to give notices, &c.
30. Brigadier General, his duty; brigade inspector, to inspect arms and report.

SECTION

31. Regimental drill musters to continue two days; officers to attend, and how armed, &c.
32. Fines, their amount; for what assessed.
33. When regimental musters to be held at county seats.
34. Who exempt from military duty on account of conscientious scruples; commutation to be paid.
35. Governor to furnish independent companies with arms; to take bond for their safe return.
36. Governor to deliver arms to independent companies.
37. Court martial, when held; its duty; its power to assess fines; appeals, &c.; fines, how collected; form of warrant of collection; constable to collect and pay over; his fees for collection.
38. Scale of forfeitures and penalties.
39. When officer charged with any offence, how complained of, arrested and tried.
40. Witnesses, how subpoenaed; how compelled to attend; penalty for failure to attend.
41. Courts to try officers of the respective grades, how selected; officers, how punished.
42. Form of oaths to be taken by officers composing court martial, and by witnesses.
43. Commander-in-chief, in what cases, and in what order he may call out the militia.
44. Duty of inferior officers in such cases.
45. How men to be selected in certain cases.
46. In what cases men may be drafted.
47. Parents and guardians bound for minors.
48. Militiaman having served a tour of duty or paid fine, exempt from service; fines, how applied.
49. Duty of several officers, when militia are called into service.
50. Officers, how detailed for duty; term, manner and order of service.
51. How persons disabled, may be exempted from service.
52. Militia to serve six months; where to rendezvous; who to command them; how discharged.
53. Compensation of officers.
54. Additional persons exempt from militia duty.
55. Uniform prescribed to be worn.
56. Officers to appoint places and days for musters; roll call; exercise; discipline prescribed.
57. Colors and musical instruments to be provided.
58. Additional duty of major generals.
59. Additional duty of brigadier generals.
60. Additional duties of colonels commanding regiments, and majors commanding odd battalions.
61. Additional duties of lieutenant colonels, and majors commanding battalions.
62. Further duties of commandants of companies.
63. Vacant offices, how filled.
64. Subordination and preservation of order.

SECTION

65. Adjutant general to keep his office at the seat of government; his duties generally.
66. Division inspector, his duties.
67. Brigade majors, further duties.
68. Adjutants of regiments or odd battalions, further duties.
69. Serjeant majors, their duties.
70. Quarter-master general, his duties.
71. Staff officers, their duties.
72. Paymasters of regiments, their duties.
73. Paymasters, how punished for defalcation.
74. Expenses not herein provided for, to be paid out of contingent fund.
75. When a new division or brigade is created, new elections, how and when held.
76. Independent company may adopt its own by-laws.

SECTION

77. Orderly serjeant, his duty.
78. Independent companies may, in their by-laws, assess fines, &c.
79. Independent companies to muster at least once in each year.
80. How such fines may be collected.
81. Constitution and by-laws of independent company, how authenticated; members may be witnesses.
82. Fines, by whom received, and how applied.
83. In what case volunteer companies may form regiments and battalions.
84. Such regiment or battalion may adopt constitution and by-laws.
85. Eight years service in independent company, to exempt from militia duty.

SECTION 1. All free white male inhabitants, resident in this State, who are or shall be of the age of eighteen, and under the age of forty-five years, except as hereinafter excepted, shall severally and respectively be enrolled in the militia by the captain or commanding officer of the company within whose bounds such citizen shall reside, within ten days after he shall be informed of such residence; and also, those who may from time to time arrive at the age of eighteen, who shall reside in the bounds of his company; and shall without delay notify such person by an officer or non-commissioned officer of the company; and every such person so notified shall, within six months thereafter, provide himself with a good musket, fuzee or rifle, with proper accoutrements. The field officers, ranking as commissioned officers, shall be armed with a sword and pair of pistols, and the company officers with a sword; and every person so enrolled, and providing himself with arms and accoutrements required as aforesaid, shall hold the same exempt from execution, distress, or for tax: *Provided*, No private shall be compelled to appear on parade with arms unless he actually has them.

SEC. 2. The enrolled militia of this State shall be laid off into divisions, brigades, regiments, battalions, and companies. The counties of Clinton, St. Clair, Monroe, Randolph, Jackson, Johnson, Franklin, Jefferson, Washington, Perry, Union, Alexander, Pope, Gallatin and Hamilton, shall compose the first division: The counties of White, Wabash, Edwards, Wayne, Clay, Lawrence, Marion, Effingham, Jasper, Crawford, Coles, Clark and Edgar, shall compose the second division: The counties of Madison, Macoupin, Bond, Montgomery, Morgan and Greene, shall compose the third division: The counties of Sangamon, Tazewell, McLean, Macon, Shelby, Fayette, Champaign and Vermilion, shall compose the fourth division: And the counties of Calhoun, Pike, Schuyler, Adams, Hancock, McDonough, Warren, Knox, Fulton, Peoria, Henry and Mercer, shall compose the fifth division: The counties of Jo Daviess, Whiteside, Rock Island, Ogle, Putnam, La Salle, Iroquois, Will, Kane, Cook, McHenry and Winnebago shall compose the sixth division of the Illinois militia. The counties of Clinton, St. Clair, Monroe and Randolph, shall compose the first brigade, of the first division: The counties of Johnson, Franklin, Washington and Jefferson, shall compose the second brigade, of the first division. The counties of Perry, Jackson, Union and Alexander, shall compose the third brigade, of the first division. The counties of Pope, Gallatin and Hamilton, shall compose the fourth brigade, of the first division. The counties of White, Wayne, Marion, Clay and Edwards, shall compose the first brigade, of the second division. The counties of Wabash, Lawrence, Effingham, Jasper and Crawford, shall compose the second brigade, in the second division. The counties of Coles,

Clark and Edgar, shall compose the third brigade, in the second division. The counties of Bond, Madison and Montgomery, shall compose the first brigade of the third division. The counties of Greene and Macoupin, shall compose the second brigade in the third division. The county of Morgan, shall compose the third brigade of the third division. The counties of Sangamon and Tazewell shall compose the first brigade of the fourth division. The counties of McLean, Macon, Shelby, Fayette, Champaign and Vermilion shall compose the second brigade of the fourth division. The counties of Calhoun, Pike, Schuyler and Adams, shall compose the first brigade of the fifth division; and the counties of Fulton, Peoria, Henry and Knox shall compose the second brigade of the fifth division; and the counties of Hancock, McDonough, Warren and Mercer, shall compose the third brigade of the fifth division; the counties of Jo Daviess, Whiteside, Rock Island, Ogle, Winnebago and Putnam, shall compose the first brigade of the sixth division; and the counties of La Salle, Iroquois, Will, Cook, Kane and McHenry, shall compose the second brigade of the sixth division.

SEC. 3. The militia of this State shall be officered as follows, to-wit: To each division there shall be one major general, who shall appoint one division inspector, one division quarter-master, to rank as colonels of infantry; and two aids-de-camp, to rank as lieutenant colonels. To each brigade, there shall be one brigadier general, who shall appoint one brigade inspector, to act as brigade major; one quarter master and one aid-de-camp, to rank as majors. The aid-de-camp, to perform the duty of brigade judge advocate. To each regiment there shall be one colonel, one, two or three majors, (as the case may be) the senior to be lieutenant colonel, with a regimental staff, to be appointed by the colonel, to consist of one adjutant, who shall act as regimental judge advocate: one quarter-master and one paymaster, to rank as captains, respectively: One surgeon and surgeon's mate, one sergeant major, one quarter master sergeant, one drum major, and one life major. To each odd battalion, not forming a part of a regiment, one major, with a staff of a regiment, to be appointed by the major. To each company there shall be one captain, one first and one second lieutenant, four sergeants, four corporals, one drummer and fifer; the said sergeants and corporals, to be appointed by the captains, respectively, and to hold their appointments by certificate.

SEC. 4. There shall be one adjutant general, quarter master general and paymaster general, to be appointed by the commander-in-chief, to rank respectively as colonels of cavalry: and the commander-in-chief, is also authorized to appoint two aids-de-camp, with the same rank, to continue in service until the expiration of his term of service as Governor.

SEC. 5. Each division, brigade, regiment, battalion and company, when in the field, shall take rank agreeably to the date of the commission of the officer commanding the same: each division shall consist of not less than two nor more than six brigades: each brigade of not less than three nor more than six regiments: each regiment of not less than two nor more than three battalions: each battalion of not less than three nor more than six companies: each company shall consist of not less than thirty-two nor more than ninety-six privates.

SEC. 6. Whenever it becomes necessary to create new, or alter old brigade districts, the major general of the division shall call the field officers, or a majority of them together, in which brigades the bounds are to be fixed; he shall act as president of the board, and cause the division inspector to record any alterations that may be made: in like manner whenever it becomes necessary to divide any regi-

ment in this State so as to make two regiments, it shall be the duty of the colonel or officer commanding the same, to notify the brigadier general of his brigade thereof, who may, if he think such division proper, issue his order to the colonel, or officer commanding said regiment, directing him to convene a board of officers of his regiment, which shall consist of all the commissioned officers thereof, a majority of whom shall constitute a quorum, the colonel, or officer highest in rank present, presiding. Said board, when so convened, shall proceed to determine whether they will divide said regiment; and if a division is agreed upon, they shall designate the line of division, and the place of holding the regimental muster of the new regiment, and cause the same to be recorded by the adjutant of said regiment, who shall be in attendance for that purpose. A return of the proceedings of said board shall forthwith be transmitted to the general of said brigade, who shall issue his order for an election for a colonel to command the new regiment, which shall be conducted, and return thereof made as in other cases. But commissioned officers, living in the bounds of any regiment so created, or of the old regiment, shall continue to hold their respective offices as though no such division had been made. In like manner, whenever it shall become necessary to alter any old regimental district, it shall be the duty of the brigadier general of the brigade, to call a board of field officers, to consist of not less than five, for that purpose; at which board he shall preside, and cause his brigade major to record all the proceedings, and alterations made by such board; also in like manner whenever it becomes necessary to alter old, or create new battalion districts, it shall be the duty of the colonel to call the field officers and captains of the regiment together, a majority of whom may act; and it shall be the duty of the colonel to preside at such meeting, and cause his adjutant to record all alterations made by such board; and whenever it becomes necessary to alter old, or create new company districts, it shall be the duty of the major to call a meeting of the captains of his battalion, a majority of whom may act; at which meeting he shall preside; and it shall be the duty of the adjutant to record the proceedings and alterations made by such board.

SEC. 7. No person shall be eligible to a command in the militia in this State who is not a citizen of the United States and of this State, and has not resided in the proper bounds at least ten days: and every officer commissioned by virtue of this chapter, shall within thirty days after receiving a commission, and previous to entering upon the duties of his office, take an oath to support the constitution of the United States and of this State; also an oath of office; a certificate of which shall be indorsed on the back of his commission, by the person administering the same: and if any person receiving such commission, who was elected by his own consent, shall fail to take the oaths as aforesaid, within the time herein provided, and give notice thereof within twenty days thereafter to the proper officer, whose duty it shall be to direct such vacancy to be filled, and to forward the date of his commission to the adjutant of the regiment, he shall be fined in the sum of ten dollars, by sentence of the regimental court martial, and forfeit his office; which shall be filled as in other cases: *Provided*, That any officer declared duly elected, may receive a certificate of any superior officer, which shall entitle him to command until his commission can be procured; and in all cases the officer giving such certificate, shall administer to such officer the necessary oaths of office: *Provided, also*, That whenever it may be necessary to administer oaths to carry into effect any of the provisions of this chapter, any judge, justice of the peace, or officer of the militia, duly commissioned and sworn, shall be authorized to administer such oath.

SEC. 8. There may be one company of artillery and one company of cavalry attached to each regiment, to be raised by voluntary enrollment; and one company of grenadiers, light infantry or riflemen, attached to each battalion, to be raised also by voluntary enrollment: *Provided*, It shall not reduce a district company in such regiment or battalion, below the number of forty-two, rank and file: and if such company will thereby be reduced below the number of forty-two, rank and file, such person shall return to his proper company; and in no case shall an election be held or ordered in any independent company, until it shall be made to appear that there are at least forty-two men authorized to serve, enrolled in such intended company.

SEC. 9. All light or independent companies shall be armed and equipped in the same manner that similar corps are in the army of the United States; and shall consist of the following officers, non-commissioned officers, musicians and privates, to-wit: To each company of cavalry, there shall be one captain, one first, one second, and one third lieutenant, one cornet, four sergeants, four corporals, one saddler, one farrier, one trumpeter, and not less than forty-six, nor more than one hundred and sixteen, rank and file: to all other independent companies, there shall be one captain, one first, one second, and one third lieutenant, four sergeants, four corporals, one drummer, one fifer, and not less than forty-six, nor more than one hundred and sixteen, rank and file: *Provided*, That each independent company may agree upon an uniform, which they shall wear upon parade and in service.

SEC. 10. All independent companies, when called into service, shall serve by company, and if any non-commissioned officer, musician or private, in any such company, shall refuse or neglect, either by himself or a substitute, to perform such service, after being duly notified, such person shall be considered as in service, and shall be liable to be punished as a deserter: and if any member of such company shall be sick or absent, when his company is called into service, such person shall be required to join his company as soon as his health will permit, or he shall have returned to the State, under the same penalty of refusing or neglecting to perform service: *Provided*, That when any independent company shall have served a regular tour of duty, no person shall be admitted a member of such company, without producing to the officer commanding the same, a regular discharge, stating that such applicant has served a similar tour.

SEC. 11. For good cause shown, the commander-in-chief may receive the resignation of major generals, who may accept the resignation of brigadier generals, within their respective divisions. Brigadier generals may accept the resignation of colonels, or officers commanding odd battalions, within their respective brigades; and colonels or officers commanding odd battalions may accept the resignation of commissioned officers, within their respective commands, and in all cases when a resignation is accepted, the cause of such resignation shall be indorsed on the back of the commission: and it shall be the duty of all officers authorized to accept resignations as above, to order elections to fill such vacancies as may occur by resignation or otherwise, giving at all times, sufficient notice of such election; and except in cases of emergency, the order for an election of a major or brigadier general, shall be given to the officers commanding regiments or odd battalions, within the limits of the division or brigade, where such election is to be held, at least forty days previous to such election; who shall give to all commissioned officers of their respective commands, at least twenty days' notice of the time and place of holding such election. For the election of a colonel or major commanding an

odd battalion, the order shall be given to the next common superior officer, at least twenty days previous to such election; who shall give at least ten days' notice of the time and place of holding such election, to all the officers commanding companies within the regiment or battalion, (as the case may be) where such election is to be held; who shall give at least five days' notice to their respective commands. For the election of a lieutenant colonel or major, there shall be at least fifteen days' notice given to all the officers commanding companies, within their respective battalions, who shall give at least five days' notice of the time and place of holding such election, to their respective companies. For the election of a captain or commissioned officer, there shall be at least ten days' notice given to the senior commissioned, or if there be no commissioned, non-commissioned officer of the company, who shall give to the company at least five days' notice of the time and place of holding such election. All returns of elections so held, shall be made to the officer ordering the same, who shall certify to the adjutant general, within thirty days thereafter, the names of all officers who may have been thus duly elected. And it shall be the duty of all officers, authorized to appoint staff officers, to accept their resignation as above, and fill all vacancies in their own staff by appointment: *Provided*, That no resignation of an officer shall be accepted, unless such officer shall have held his commission at least two years.

SEC. 12. The manner of voting shall be, by the elector addressing the judges of the election, in his own proper person, and with an audible voice, to be heard by the judges and clerk, name the person he votes for, and the clerk shall enter the name of the person voting, and his vote, accordingly, in a poll book to be provided for that purpose; which poll book shall be, (as near as may be) in the following form, to-wit:

A poll book of an election held at _____, in the county of _____ in the
regiment of Illinois Militia, on the _____ day of _____ 18 _____.

Names of Voters.	Candidates for &c.		
	C	D	F
A. B.	1		
C. D.		1	

When all the votes shall be given, they shall be examined and counted; the judges shall cause the clerk to make out a return thereof as near as may be, in the following form, to-wit:

At an election held at _____, in the county of _____, in the _____ regiment of Illinois Militia, on the _____ day of _____ A. D., 18 _____, the following named persons received the number of votes annexed to their names, for the following described offices, to-wit:

- A. B. had — votes for Major General.
- C. D. had — votes for Brigadier General.
- E. F. had — votes for Colonel.
- F. G. had — votes for Major.

(and in like manner for all other offices.) Certified by us,

A. B.,
C. D.,
E. F., } *Judges of election.*

Attest:

J. H., *Clerk of election.*

Which return, when so made out and certified, shall be transmitted by the judges to the officer ordering the election; and the poll book aforesaid, shall be transmitted to the adjutant of the regiment, (or odd battalion, as the case may be,) to be by him filed with the records of his office; and in case of a contested election, it shall be the duty of the adjutant to transmit the same to the presiding officer of the court of inquiry, in which such contest shall be tried; and the person having the greatest number of votes shall be declared duly elected.

SEC. 13. All contested elections in the militia of this State, shall be tried by a board of officers, to be appointed for that purpose by the officer ordering the same, under the rules and regulations following, to-wit: The commander-in-chief shall appoint the board of officers, to decide the contested elections of major generals; major generals shall appoint the board to decide the contested elections of brigadier generals; brigadier generals shall appoint the board to decide the contested elections of colonels, lieutenant colonels and majors; and the commandants of regiments and odd battalions, for the time being, shall appoint the board to decide the contested elections of captains and subaltern officers: *Provided*, That in all cases the members composing such board of officers as aforesaid, shall be as near the rank as may be, of the officer whose election shall be contested; and shall consist of not less than three, nor more than seven members.

SEC. 14. The officer appointing the board of officers as aforesaid, shall notify each member thereof in writing, of the time when, and place where such board is to be held; and if any officer, when so appointed and notified as aforesaid, shall neglect or refuse to attend at the time and place of holding such board, he shall be liable to be fined as in other cases, for neglect of duty.

SEC. 15. The division inspector shall attend all boards of officers, which may be organized to pass upon the contested elections of major generals; and shall keep a record of the proceedings of such boards respectively. The brigade inspector shall attend all boards which may be organized to pass upon the contested elections of brigadier generals; and shall keep a record of the proceedings of such boards respectively. And the adjutant of the regiment (or odd battalion, as the case may be,) shall attend all boards which may be organized, to pass upon the contested elections of colonels, lieutenant colonels, majors, captains and subaltern officers; and shall keep a record of the proceedings in each case respectively: and the decisions of all such boards of officers, which may at any time be instituted as aforesaid, shall be final and conclusive upon all the parties concerned.

SEC. 16. When any election shall be contested as aforesaid, it shall not be lawful for the officer, whose duty it may be to certify the same, to make return thereof, until a decision shall be had thereon as aforesaid; after which, the presiding officer of the board shall certify to the officer who may have appointed the same, which of the contending parties is entitled to the office; and such successful party shall then be commissioned as in other cases: *Provided*, That no exception shall be allowed to be taken to the election of any officer, unless the same be done within ten days after such election shall have been held.

SEC. 17. The presiding officer of any board, which may at any time be appointed to pass upon a contested election as aforesaid, shall have power, at the request of either party, to send for and examine witnesses: and if any witness, when properly summoned, shall refuse or neglect to attend any such board as aforesaid, without a reasonable excuse, it shall be the duty of the presiding officer as aforesaid, to turn such witness over as a delinquent to the next regular court of inquiry, to be

held for the county wherein such witness shall reside; who shall thereupon proceed to acquit or to assess the fine of such witness, as circumstances shall require, in like manner as is prescribed against delinquent militiamen, for failing to attend muster, when legally required so to do.

SEC. 18. All oaths of office to be taken by the militia officers in this State, shall (as near as may be,) be in the following form, to-wit: "I do solemnly swear, (or affirm,) that I will support the constitution of the United States and of this State, and that I will not be engaged in duelling, either directly or indirectly, during my continuance in office; and that I will faithfully discharge the duties of captain, in the regiment of Illinois militia, (or otherwise, as the case may be,) to the best of my skill and understanding, so help me God." Which said oath shall be indorsed on the commission or certificate, (as the case may be,) and certified by the officer administering the same.

SEC. 19. In addition to the staff in the several regiments and odd battalions in this State, as at present organized, there shall be appointed by the commandant of each regiment and odd battalion, a *color bearer*, to each battalion, whose duty it shall be to take charge of the colors of the battalion to which he may belong, and bear the same at all regimental and battalion parades and drill musters, and on such other occasions as shall be necessary, when required so to do.

SEC. 20. Whenever any officer of the militia in this State, shall have served as such, without intermission, for the period of seven years, and shall have been completely equipped for the whole of said time, according to law, he shall ever after be exempted from the performance of military duty, except in time of war, invasion or insurrection.

SEC. 21. If the members of any militia company in this State, shall neglect or refuse to elect company officers to command such company, when legally notified of the time and place of holding an election for such purpose, and such company shall thereby become unofficered and disorganized, it shall be the duty of the commandant of the regiment or odd battalion, (as the case may be,) to attach such company to the next nearest company in the regiment or battalion, to which the same may belong, without delay; whereupon the officer commanding the company, to which the same may be attached, shall proceed to enroll the names of all the militiamen within the bounds of such attached company, and shall require them to perform military duty in such company, in all respects, as though they had originally belonged to his command.

SEC. 22. All volunteer cavalry, grenadier, light infantry and rifle companies, now raised and organized, shall have until the first day of April next to uniform and equip themselves, respectively: *Provided*, That no such company shall hereafter be dissolved for the want of equipment as the law directs; but in such case, each member shall be fined twenty-five cents, for each and every day he shall appear on parade without being equipped according to law, and the regulation of the company to which he may belong.

SEC. 23. In all cases where militia officers shall be fined for appearing on parade without equipments, the fine shall be proportioned according to the extent to which the uniform of such officer shall be deficient.

SEC. 24. In all cases hereafter, where a resignation is accepted, the cause of such resignation may either be indorsed on the commission, or, if the commission be not surrendered, on the letter of resignation.

SEC. 25. There shall be in every year, a muster of each regiment, on such day in September as the commandant of the brigade shall direct, at which all field, staff and company officers, non-commissioned officers, musicians and privates of the regiment, shall attend, armed and equipped as the law directs.

SEC. 26. There shall be in every year, at such time and place, in April, as the commandant of the battalion may direct, a muster of each battalion, at which every commissioned and non-commissioned officer, musician and private of the battalion, shall attend, armed and equipped as the law directs.

SEC. 27. There shall be in every year, in April, at such time and place as the commandant of the company may direct, a muster of each company; at which every commissioned and non-commissioned officer, musician and private of such company, shall attend, armed and equipped as the law directs: and it shall be the duty of the commandants of companies at such muster, to notify the company of the times and places of holding all musters and courts of assessment and appeal, for the current year, which any of the company may be required to attend; which shall be all the notice required for persons regularly enrolled.

SEC. 28. Each brigadier general shall appoint the days in each year, on which the regimental muster shall be held in his brigade, and notify the commandants of regiments and the major general thereof, by the first day of March annually: *Provided*, That if the brigadier general should fail to notify the commandant of any regiment, of the time prescribed by law, the commandant of such regiment, shall appoint his own regimental muster.

SEC. 29. The commander of each regiment, on receiving from the commandant of the brigade, notice of the time of holding the annual regimental muster, shall add thereto the place of holding the same, and also the time and place of holding the annual battalion and the regimental drill musters, and the court of assessments and appeals; a copy of which he shall cause to be delivered to the field officers and commandants of companies, by the first day of April thereafter.

SEC. 30. And the brigadier generals are hereby required to attend the regimental musters in their respective brigades, accompanied by their brigade inspectors, whose duty it shall be to inspect the militiamen, their arms and equipments, and report the condition of the same to the major general commanding the division to which their brigades may belong, within thirty days thereafter; and the said brigadier generals are hereby required to review each regiment of their brigades before they are dismissed from parade.

SEC. 31. There shall be one regimental drill muster in each year, at such time and place as may be appointed by the commandant of the regiment as aforesaid, to continue two days; at which all the commissioned and staff officers and sergeants of the regiment shall attend; commissioned officers to be armed with swords, fire arms and accoutrements: *Provided*, That field officers only, shall be compelled to be armed with swords; non-commissioned officers with fire-arms and cartouch boxes, or pouch and horn; and shall be trained and exercised agreeably to the rules and regulations of the army of the United States; except that surgeons and surgeon's mates need not attend such drill; and the commandant of the regiment, or in case of his absence, the officer highest in rank or command at such drill, shall cause the roll of officers to be called on each day, note all delinquents, and make return thereof to the next court of assessment: *Provided*, That all the notices required as aforesaid, shall be issued by the colonels and majors commanding odd battalions, in writing, to each of the captains by the first of April annually; and

the captains shall give notice to their companies respectively, at least ten days previous to the first muster in the year, by causing written or printed notices to be set up in five of the most public places in the bounds of their companies respectively, stating the time and place for all the musters and courts of assessment and appeals, for that year.

SEC. 32. No private shall be fined more than seventy-five cents, for failing to attend any regimental muster, or more than fifty cents for failing to attend any battalion or company muster. No captain shall be fined for failing to wear epauletts, or subaltern officer for failing to equip himself in time of peace.

SEC. 33. In all cases where there is only one regiment in the county, the regimental muster shall be held at the county seat.

SEC. 34. No person conscientiously opposed to doing military duty, by reason of his religious opinions, shall be compelled to do so in time of peace: *Provided*, Such person shall be a member of a religious society, whose rules require him to support all poor persons connected with such society: and any person so being opposed to doing militia duty, but not a member of any religious society, may be exempted therefrom, on paying seventy-five cents each year into the county treasury. The clerk of the county commissioners' court of the county where such application shall be made, shall require an affidavit of the applicant, that he is conscientiously opposed to doing military duty, and of his age, and make a record thereof, and issue his certificate to such applicant, of his exemption from doing military duty in time of peace; such applicant shall pay the clerk granting such certificate, twenty-five cents; and the clerk shall keep a record of all such certificates and affidavits so granted by him, in a book for that purpose.

SEC. 35. When any independent company of grenadiers, light infantry, riflemen, artillery or cavalry, shall become organized and uniformed according to law, the captain or commanding officer thereof may petition the Governor to furnish him for the use of his company, with such a number of muskets, rifles or other arms, with their accoutrements, or if an artillery company, a cannon or field piece and swords, with their necessary appendages, as their respective companies may require, and set forth in said petition the regiment to which his company belongs, the number it contains, and a specific number and description of the arms and equipments requisite for them; which number shall not be for more than ten persons over and above the number of rank and file his company shall at that time contain; which petition shall be accompanied with a certificate of the colonel or commanding officer of the regiment to which it belongs, that such company has been organized according to law; and also a bond, payable to the Governor and his successors in office, for the use of the people of the State of Illinois, in a penal sum, equal to fourteen dollars for each musket and equipment by him so petitioned for, a sum equivalent thereto for such other arms as they may require, according to the prices at which they are rated by the United States, when furnishing them, and signed by himself as principal, with good and sufficient securities, conditioned to safely keep and have in readiness for use, the arms and other equipments by him received, in case they should be required at any time. Which bond must be proved as to the sufficiency of the security, by the judge of the circuit court of the county where such company is formed; and his certificate thereof, together with the bond, shall be filed in the office of the secretary of State.

SEC. 36. The Governor, upon application being made to him as aforesaid, may, if there be any arms or other equipments, so petitioned for, within the State, or due

to this State from the United States, immediately furnish him with the same: and the person so applying, shall, upon their being delivered, consider them in his care, and from that time shall become responsible for the same, upon the conditions of his bond: And said company shall be permitted to use the same upon all occasions, whenever they may be called together for any kind of duty.

SEC. 37. There shall be held, annually, at the same place, on the same day week next succeeding the regimental muster, a court of inquiry and assessment of fines, to be composed of the colonel, lieutenant colonel, major and captains, or any five of them, if a regiment, or three if a battalion, may act; the said court to continue in session from day to day, until the business shall be finished. It shall be the duty of said court to assess fines on all delinquent officers, non-commissioned officers, musicians and privates, belonging to such regiment, in conformity to the provisions of this chapter: and to fine all captains or officers commanding companies, who shall neglect or refuse to return to said court by twelve o'clock of the day of such court's sitting, all the delinquencies of their respective companies, at the several musters, held during the year; and it shall be the duty of all delinquents so returned, to appear without further notice at said court, to make a lawful excuse, if any they have; and should any persons feel themselves aggrieved by the decision of said court, they may appeal to the colonel for a new hearing, who shall, on receiving satisfactory evidence that it is just, grant the same, by giving an order to the constable to suspend the collection of such fine; and if the person so applying for a new hearing shall fail to attend at the next annual court of assessment, or shall not be able to show cause why he should not have been fined, it shall be the duty of said court to issue their warrant anew for the amount, with an addition of twenty per cent. The presiding officer of each board shall cause the adjutant of the regiment to keep a record of the proceedings of the court, in a book kept for that purpose, and make out therefrom, a certified list of the names of the persons fined, with the fine or fines annexed to each name; upon which list it shall be the duty of the presiding officer to issue, and furnish to the constable appointed to collect such fines, the following warrant, to be indorsed at any time when it may be necessary, which shall be his authority for collecting and paying over the same, to-wit:

STATE OF ILLINOIS, }
COUNTY. } ss. To *A. B.*, constable of the county of _____, GREETING:

In the name of the people of the State of Illinois, you are hereby required and commanded to collect from each person named in the foregoing list, the several sums of money set opposite their respective names, and within ninety days after receiving this warrant, to pay over to the paymaster of the regiment the amount so collected, and take his receipt for the same; and if any one or more of the said persons shall neglect or refuse to pay the same, you are hereby further commanded to levy on the personal goods and chattels of each delinquent, and make sale thereof according to the law regulating the collection of debts of a similar amount by execution in this State.

Given under my hand, this _____ day of _____, A. D., 184 _____.

A. F., colonel of the
regiment _____ and president of the court.

And any constable collecting any fines under the provisions of this chapter, who shall neglect or refuse to pay over the amount so collected, as required in the foregoing warrant, after deducting twenty per cent., which shall be his fees for collection, it shall be the duty of the paymaster of the regiment to proceed against such

constable or his securities, before any justice of the peace of said county; and the said constable and his securities shall only be exonerated from the payment of the amount of such fines, by showing to the satisfaction of such justice, that there was no property whereon to levy, of which such fine or fines could be made, or that the collection had been suspended by order of the colonel; and if, in the opinion of the commandant of the regiment, or another board of officers, any constable has neglected his duty, it shall be the duty of such colonel or board to withdraw the warrant from such constable, and appoint another or others, as the case may require.

SEC. 38. The following forfeitures and penalties shall be incurred for delinquencies, to-wit: By the commandants of divisions, for neglect of any of the duties enjoined on them the sum of twenty dollars; by the commandant of brigades, for neglect of any lawful orders of their superior officers or any of the duties enjoined on them, the sum of fifteen dollars; by the commandant of a regiment, for neglect of any orders of his superior officers, or any of the duties enjoined on him, the sum of ten dollars; by the commandant of a battalion, for neglect of any orders of his superior officers, or any of the duties enjoined on him, the sum of eight dollars; by the commandant of a company, for neglect of any orders of his superior officers, or any of the duties enjoined on him, the sum of five dollars; by any subaltern officer for neglect of any orders of his superior officers, or any of the duties enjoined on him, the sum of three dollars; by the adjutant general, quarter-master general, paymaster general, or either of the aids-de-camp to the commander in chief, for neglect of any orders of their superior officers, or any of the duties enjoined on them, the sum of fifteen dollars; by a division inspector, division quarter-master, division paymaster, or either of the aids-de-camp to the major general, for neglect of any orders of their superior officers, or any of the duties enjoined on them, the sum of ten dollars; by a brigade major, brigade quarter-master, or the aid-de-camp to the brigadier general, for any neglect of any orders of their superior officers, or any of the duties enjoined on them, the sum of eight dollars; by adjutant, quarter-master, paymaster, surgeon or surgeon's mate of a regiment, for neglect of any orders of their superior officers, or of any of the duties enjoined on them, the sum of five dollars; by the regimental non-commissioned staff officers, for neglect of any orders of their superior officers, or any of the duties enjoined on them, the sum of two dollars; by non-commissioned officers, musicians and privates of companies, for neglect to attend any regimental muster, the sum of two dollars; or any other muster fixed or ordered agreeably to law, or for neglect of any orders of a superior officer, the sum of one dollar; for failing to attend at any muster without their proper arms, uniform and accoutrements, they shall be fined in proportion to rank as recited in the foregoing part of this section, in one-half the sum for neglect of duty or disobedience of orders. Fathers shall be bound for the payment of fines incurred by their sons under twenty-one years of age; guardians, for the payment of fines incurred by their wards; and masters, for the payment of fines incurred by their apprentices; to be charged and collected accordingly.

SEC. 39. On complaint of a commissioned officer in writing, to a superior officer, charging any officer under the command of such superior, with neglect of any of the duties enjoined on them by law, of disobedience of orders, or of being guilty of any conduct unbecoming an officer or a gentleman, such superior officer shall, if he thinks the complaint sufficient cause for an arrest, cause the officer against whom such complaint is made, to be arrested, by notifying such officer in writing that he is suspended from command until acquitted from such arrest; stating at the same

time, the grounds of arrest, and the time and place of trial; and at the same time notify the officer next in command, that in consequence of such arrest, he is required to do the duties which were enjoined on the officer so arrested: *Provided*, That when any superior officer shall consider the charges made against any officer of insufficient consequence to cause his arrest, he shall, on application of the officer preferring the charges, give him his reasons in writing for his refusal to cause the arrest; which reasons the complaining officer may send, together with the charges, to the next common superior, who may, if he thinks it correct, order the arrest and trial of such officer.

SEC. 40. In all cases where an officer is arrested, the officer who orders the arrest, shall issue any subpoenas that may be applied for by either of the parties, or which he may think necessary to compel the attendance of witnesses: and the party so applying, or any person whom the officer granting the subpoena may appoint, may serve the same, and indorse the time of service thereon, which shall be at least three days previous to the sitting of the court martial, and shall make a return thereof to the president of the said court, the first day thereof, who shall, if necessary, administer an oath or affirmation to the person returning the subpoena relative to the service thereof: any person who neglects or refuses to attend a court martial, after being subpoenaed, shall be fined, in a sum not exceeding fifty dollars, which fine shall be collected and applied as other fines under the provisions of this chapter; and any court martial shall have power to issue compulsory process to compel the attendance of witnesses who neglect or refuse to attend, after being duly subpoenaed.

SEC. 41. Major generals shall be tried by courts martial appointed by the commander-in-chief, where a major general shall preside; brigadier generals shall be tried by courts martial appointed by a major general, where a brigadier general shall preside; colonels, lieutenant colonels, majors and captains, shall be tried by courts martial appointed by a brigadier general, where a colonel shall preside; and subalterns shall be tried by courts martial appointed by a colonel, where a lieutenant colonel or major shall preside: each court martial shall consist of not less than five, nor more than thirteen members, and to be of rank, as near as can be conveniently had, of the officer tried: all courts martial, so ordered, shall have power to punish any officer for neglect of duty, disobedience of orders, contempt, or any conduct unbecoming an officer or a gentleman, by suspension, fining, cashiering and disqualification to hold any office in the militia of this State: *Provided*, That when the militia are called into service, the commanding officer present shall alone have power to order an officer into a state of arrest, except in such cases as are designated in the twenty-seventh article of war.

SEC. 42. When any court martial is met, the president shall administer the following oath or affirmation to the judge advocate: "You do solemnly swear, or affirm, (as the case may be) that you will not disclose or discover the vote of any particular member of this court martial, unless required to give evidence thereof as a witness by a court of justice, nor divulge the sentence of the court to any but the proper authority, until it shall be disclosed by the same;" and the judge advocate, or the person acting as such, shall administer the following oath to each member of such court martial: "You do swear, or affirm, (as the case may be,) that you will truly determine, according to evidence, the matter now before you, between the United States, or the State of Illinois, (as the case may be,) and A. B. (the person to be tried) and that you will truly administer justice, according to law, without

partiality, favor or affection, according to your conscience and the best of your understanding, and the custom of war in like cases; and that you will not divulge the sentence of the court, until it shall be published by the proper authority; neither will you discover the vote or opinion of any member of the court, unless required to give evidence thereof in a court of justice." The judge advocate shall prosecute in the name of the United States, or of this State, (as the case may be,) but shall so far consider himself counsel for the person accused, as to object to any leading question being put to him, or any witness, which might tend to criminate himself; he shall also see that right and justice shall be done to the accused. All persons giving evidence before a court martial, are to be examined on oath, in the following manner: "You do swear, or affirm, (as the case may be) that the evidence that you give shall be the truth, the whole truth, and nothing but the truth." The court shall have power to punish its members, or any person attending the same, for disorderly conduct, as in other cases; and in giving their votes on any subject, to begin with the lowest in rank: *Provided*, That the party tried by such court martial, shall be entitled to a copy of the sentence and the proceedings of the court in his case, after the decision and sentence, upon demand thereof, whether such sentence be approved or not: *Provided, also*, That all sentences of any general court martial shall be submitted to the officer ordering such court, who shall have power to approve or disapprove the sentence of any such court; also, to pardon, or mitigate the sentence.

SEC. 43. Whenever it may be necessary to call into actual service any part of the militia of this State, on a requisition of the executive of the United States, on an actual or threatened invasion of this State, or any of the neighboring States or territories of the United States, the commander-in-chief, shall forthwith demand from each division, a detachment in proportion to the strength thereof, except as hereinafter excepted: which order shall be delivered by a special messenger to the several commandants of divisions, specifying the number required from each division; the time and place of rendezvous, if ordered to march, and if the same be detached under any particular act of the United States, to indorse the same on such order; and the several commandants of divisions, after receiving such notice shall proceed forthwith to detach the same accordingly: *Provided*, That whenever the safety of any of the frontier settlements of this State shall, in the opinion of the Governor, require it, he may exempt the militia in such settlements, from being called into service, and make such further provisions for their defence as the necessity of the case may require: which exemption shall be expressed in his orders to the commandants of the divisions, who together with the commandants of brigades, regiments, battalions and companies, shall govern themselves accordingly: *And, provided also*, That such militiamen may be required to serve as spies on their own frontiers; and that on actual invasion, or any extreme emergency, the commander-in-chief, commandants of divisions, brigades, regiments, battalions and companies, may call on the whole or any part of the militia under their respective commands, as the nature of the case may require; who shall continue in service if necessary, until the militia can be regularly called out; and all manner of persons so called and refusing to serve, shall be liable to the penalties and punishments, as if they had been regularly drafted into actual service.

SEC. 44. Whenever any detachment of militia of this State, shall be ordered into actual service, to perform a tour of duty, under the laws of this State, the commanding officer of brigades or regiments, on receiving the proper orders from any

superior officer, shall issue his orders to the commanding officers of the regiment or battalion composing his brigade or regiment, (as the case may be,) detailing to them the number of men required from their respective commands, ordering them to cause the captains or commanding officers of companies, together with the subalterns or commissioned officers of their respective companies composing their regiments or battalions, to furnish the number of men required; and on the receipt of such orders, the commanding officer of each and every company so ordered, shall forthwith assemble his company at their usual place of muster, and at such meeting he shall divide those subject to do military duty, by ballot, into as many classes as there are men required of him; and in case of the absence of any of the members of the company, the commanding officer shall draw for him or them, and forthwith notify such absentee or absentees, by himself or a non-commissioned officer; and when such absentee or absentees can not be found, a written notice shall be left at his or their last and most usual place of abode, signed by a non-commissioned officer, by whom such notice may be proven; which warning shall be deemed sufficient; and each class, so formed, shall furnish one able bodied man, by draft or contract, as such class may agree, within five days thereafter, to the acceptance of the commanding officer of such company, who shall immediately enroll such man or men, and cause them to be marched agreeably to the orders he may have received for that purpose.

SEC. 45. When any class shall be called on to furnish a militia man, agreeably to the preceding section, and any part of such class shall agree and actually furnish such able bodied man, to the acceptance of the commanding officer of such company, and the remaining part of such class, furnishing a man, shall report the same, in writing, to the commanding officer of the company to which such class may belong; and on the receipt of such report, the captain or commanding officer shall immediately assess on the members of the class, equally, the amount which may have been paid or contracted to be paid by that part of the class who have furnished the man, and shall certify and deliver the same over to such part of the class as has furnished the man returned for service; and such man or men having furnished such able bodied man for the class to which they belong, on the receipt of such certificate, shall have full power to sue for and recover in their own name, and for their own use, for each of the remaining parts of the class who have refused or neglected to comply with such requisition, his equal part of the sum paid or to be paid as aforesaid, before any justice of the peace or court having competent jurisdiction, which shall be collected, with costs of suit, and paid over as in other cases; from which there shall be no appeal or stay of execution: *Provided*, That no more than fifteen dollars per month shall be given, in addition to the regular monthly pay of any substitute so hired in the name and for such class.

SEC. 46. If either of the classes, when regularly formed and notified, shall neglect or refuse to comply with the requisitions of this chapter, within five days, the captain or commanding officer of such company shall detach, by draft, one able bodied man from each and every class so refusing or neglecting, and cause him to be enrolled and march forthwith to the place of rendezvous; and if such man shall desert or abscond, after being ordered to the place of rendezvous, he shall be advertised and treated as a deserter; and when any militiaman shall be so drafted, the commandant of his company in which he resides, shall thereupon assess on the remaining members of the class, equally, the sum of fifty dollars, and certify the same to such militiaman, on application, who shall thereupon be authorized and em-

powered to sue for and recover, from each of the remaining members of his class the sum so assessed, in the same manner as a part of a class furnishing a man for a tour of duty are by the provisions of the preceding section empowered to recover from the part neglecting or refusing: *Provided*, That in all cases, any person so drawn, may serve by a sufficient substitute, to be approved by the captain or commanding officer of the company to which he may be offered to serve in.

SEC. 47. When there may be minors in any class, parents may be bound for their sons, guardians for their wards, to the extent of the funds of such wards in the hands of such guardians, and masters for their apprentices.

SEC. 48. No militiaman who has served a tour of duty, either by himself or substitute, nor militiaman who has paid the whole penalty for neglecting or refusing to perform a tour of duty, shall be called on to serve a second tour of duty until each remaining member of the class has served a tour of duty, either by himself or substitute: *Provided*, That all fines or penalties that may be collected for neglect, desertion or refusal to serve, shall, in time of war, be applied to hiring of substitutes, and equally divided among the classes of the company to which the person belonged, owing such fine.

SEC. 49. When any detachment of militia shall be called into service, the captain or commandant of each company, shall take care that his portion of men are assembled and marched to the proper place of rendezvous, with a list of the men; which list he shall deliver or cause to be delivered to the adjutant of the regiment, who shall make out a roll of the whole, the rank of the officers, and names of the non-commissioned officers and privates; and when the detachment shall be completed and placed under the proper officer, he shall attend them to a place appointed for the meeting of the detachment of the brigade, where the several adjutants shall deliver to the brigade major or officer appointed to command the whole detachment from the brigade, a complete roll, containing the names of the commissioned officers, non-commissioned officers and privates, composing the detachment from each regiment, noting such remarks as circumstances may require; and it shall be the duty of the officer appointed to command such detachment, to make out two complete rolls of the whole detachment, and certify under his hand, one of which he shall direct to the brigadier general, and the other to the major general of the brigade and division from which such troops are detached.

SEC. 50. For the purpose of having the militia, when called into service, properly officered, the following order is hereby enjoined, that is to say: All major generals shall serve on tours of duty agreeably to the dates of their respective commissions, if the whole detachment from the State amounts to a major general's command; and the brigadier generals shall also serve according to the dates of their commissions respectively, if the whole detachment from the State shall amount to a brigadier general's command; and if more than one brigadier general's command, the next senior brigadier general shall be called to take command; subordinates and so on in succession; and all other officers, although out of the State at the time the call is made, shall serve according to the dates of their respective commissions, as follows: The senior colonel, lieutenant colonel, major and platoon officers, within the bounds from which such regiment, battalion or company was formed, shall take command therein according to rank, in proper succession; and when there shall be two or more commissions of the same rank and date in any regiment, the commandant thereof shall, in the presence of two disinterested officers, determine the seniority of such officers by lot, which shall ever after govern such officers as to their rank; in like manner the

brigadier general shall determine the rank of colonels in his brigade; in like manner major generals shall determine the rank of brigadier generals in his division; and in like manner shall the adjutant general determine the rank of major generals: and the rank thus determined, shall be entered on the several rank rolls, as pointed out in this chapter. The division, brigade and regimental staff officers will serve on tours of duty with their respective generals or colonels, (as the case may be;) the non-commissioned officers shall serve with their respective company officers, as follows: The first sergeant, first corporal and musicians shall serve with the captain; the second and third sergeant and second and third corporal, with the first lieutenant; the fourth sergeant and fourth corporal shall serve with the second lieutenant: *Provided*, That when the adjutant shall be called to perform regular tours of duty with the colonel, he shall, previous to his departure from the regiment in which he shall belong, deliver all papers and records in his possession, and belonging to the regiment, unto the senior officer remaining in said regiment, who is hereby authorized and required, without delay, to appoint an adjutant *pro tempore*; and when absence, sickness or other circumstances prevent any non-commissioned officer of a company from marching, when called, the commissioned officers shall determine, by lot, among the other non-commissioned officers, who among them shall perform the tour of duty in place of him whose duty it was to march; and those persons on whom such lot may fall, shall be compelled to perform the tour of duty in the same manner as though he were otherwise subject to the same; and he whose duty it was to serve such tour of duty shall march on the next; and any officer or non-commissioned officer, who may resign his office after being notified to march on a tour of duty, before he has completed the same, shall be compelled to serve on such tour as a private, under all the penalties described by this chapter, for a private failing to perform a tour of duty, after being regularly drafted on such a tour: *Provided*, That the commander-in-chief may, if he shall think it advisable, permit any superior officer to take the command of any detachment of militia called into service; such officer to rank, during his continuance in such command, agreeably to its number and the requisition, without regard to his rank in the militia.

SEC. 51. If any person wishes to be exempted from military duty, on account of bodily infirmity or disability, such person shall appear before the next regimental court of inquiry or assessment, where he shall be examined on oath by the surgeon of the regiment, in the presence of the court, relative to his indisposition or disability to perform military duty; the president of the court shall give to each man found disabled, a certificate of exemption until his complaint shall be removed.

SEC. 52. The militia of this State, when called into actual service, shall serve six months, unless sooner discharged, from the time they arrive from the place of rendezvous within the brigade from which they are detached; which place shall be designated by the commandant of the brigade; and shall, in all cases, be commanded by the militia officers regularly elected and appointed, agreeably to the provisions of this chapter; and if discharged previous to the expiration of six months, shall be entitled to pay for such time as they have been in the service, allowing them a reasonable time to return to their places of residence, and shall be entitled to a discharge for a full tour of duty.

SEC. 53. The adjutant general shall be allowed, in time of war, four hundred dollars, and in time of peace, one hundred dollars, annually; the division inspector, the sum of five dollars for each regiment he shall actually inspect by order of the major general of the division to which he belongs, on the certificate of the major

general; the brigade major, the sum of ten dollars, annually, for each battalion in the brigade to which he belongs, on the certificate of the major general; officers performing the duties of special judge advocate to general courts martial, the sum of one dollar and fifty cents per day; and to officers attending a general court martial, as members or witnesses, the sum of one dollar per day for every day they may be necessarily employed in the performance of said duties, on the certificate of the officer ordering and the president of the court, to be paid out of the State treasury: *Provided*, That no compensation will be allowed to officers attending courts martial, as members or witnesses, who reside within ten miles of the place where such court is held. The adjutants of regiments, the sum of one dollar and fifty cents per day for attending each battalion and regimental muster and court of assessment, upon the certificate of the colonel, to be paid out of the funds of the regiment.

SEC. 54. In addition to the persons exempted from military duty by the laws of the United States and by this chapter, there shall be exempted the following: The lieutenant governor of the State, the chief and associate justices of the supreme and circuit courts, the attorney general of the State, licensed ministers of the gospel, and keepers of jails.

SEC. 55. The following shall be the uniform and equipments of the several officers of the militia of this State, to be worn at all times when on duty: Every general officer or of the general staff, blue coat and pantaloons, made in the fashion of the United States' uniform, gold epaulets, with sword, mounting, buttons, spurs, &c., of the same color; a round hat, black cockade, white plume, black belt, red silk sash, stock and boots; every regimental officer, a blue coat and pantaloons, made in the fashion of the United States' infantry uniform, or common dress coat, as such regimental officer may think proper, silver epaulets or epaulet, according to rank, sword, mounting, buttons and spurs of the same color; a round hat, black cockade, with plume with a red top, red belt, stock and boots: *Provided*, That platoon officers may wear a blue hunting shirt and pantaloons, trimmed with red; and for good cause shown, shall not be fined for not wearing epaulets. Officers of the medical staff may wear a blue coat and pantaloons, made in the fashion of the general staff, with black silk velvet collars and cuffs, yellow mounted sword or hanger, yellow buttons, spurs, &c.

SEC. 56. The colonels commanding regiments, lieutenant colonels, and majors commanding battalions, and captains commanding companies, shall appoint the place of holding their several regimental and drill, battalion and company musters, which shall be as near the centre of their respective commands as convenient; and all officers, non-commissioned officers, musicians and privates, whose duty it is made by this chapter, to attend any regimental drill, battalion or company muster, by the hour of ten, A. M. of the day of such muster, armed and equipped; at half-past ten o'clock, the officers commanding companies, shall cause their respective rolls to be called, and note all delinquents: at eleven o'clock the superior officers present at any regimental, drill, battalion or company muster, shall assume the command, and exercise them until three o'clock, P. M., agreeably to the established discipline for the army of the United States.

SEC. 57. The colonels commanding regiments, and majors commanding battalions, not attached to a regiment, shall, as soon as there are funds sufficient belonging to the regiments or odd battalions, purchase out of said fund, a stand of colors made after the fashion of the United States' flag, with the number of the regiment, brigade and division inscribed upon it; the captains commanding companies shall

furnish their respective musicians with proper instruments; and the drum and fife majors shall furnish themselves with proper instruments, to be paid for out of the funds of the regiment, by order of the regimental board of officers.

SEC. 58. In addition to the services required of the major generals by this chapter, it shall be their duty to review the several regiments and odd battalions not attached to regiments, composing the several brigades attached to their respective divisions, as often as is consistent, and as in their opinion the good of the service may require, to cause their respective division inspectors to record all general orders; also, all reports and rank rolls received annually from the several brigades attached to their divisions; and, when required by the commander-in-chief to make out division returns and rank rolls, to be forwarded to the adjutant general of the State; and to do and perform all other duties that may be necessary to carry into effect the provisions of this chapter, or which may appertain to the office of major general.

SEC. 59. In addition to the services required of the brigadier generals by this chapter, it shall be their duty to review their several regiments, and battalions not attached to regiments, composing their respective brigades, annually, at their regimental or battalion musters in the fall; to cause their respective brigade majors to record all reports received annually from the several regiments and odd battalions, composing their commands, and to make out a consolidated brigade return therefrom and forward one copy to the major general of the division, and one to the adjutant general of the State, on or before the first day of December, annually; and to do and perform all other duties which may be necessary to carry into full effect the provisions of this chapter, or which may be necessary to the perfection of discipline, or which may in anywise appertain to the effect of brigadier general.

SEC. 60. In addition to the services required of the colonels commanding regiments, and majors commanding battalions not attached to a regiment, it shall be their duty to require from the several officers commanding battalions, if a regiment, or companies, if a battalion, complete returns of their respective commands, on the day of a regimental or battalion muster, in the fall of each year; to cause their adjutants to record all returns so received; also, all orders received or issued by themselves; and to make out a regimental return and rank roll, and forward it to the brigadier general of their respective brigades, on the day of holding their annual regimental court. It shall also be their duty to take the command at all regimental or drill musters, and exercise their regiments or battalions, (as the case may be,) agreeably to the discipline established for the army of the United States: also, to be responsible for the good order of their respective regiments or odd battalions, as the case may be, and cause to be executed the laws and orders applicable to their commands; and to do and perform all other duties belonging to their respective offices.

SEC. 61. In addition to the service required of lieutenant colonels and majors commanding battalions, it shall be their further duty, to assume the command at all musters of their respective battalions, to require of the officers commanding companies, annual returns on the day of the regimental muster in the fall; and on the same day deliver the returns so received to the officer commanding the regiment; and to do and perform all other duties which may in any way appertain to their office.

SEC. 62. In addition to the services required of captains or officers commanding companies, it shall be their further duty, to take command of their respective

companies, at all company, battalion, and regimental musters, at ten o'clock, A. M. of the day of holding such muster; and at half-past ten o'clock call or cause the roll of their company to be called, under their immediate inspection, noting all delinquents at any such muster upon a company roll or report of delinquents made out by them for that purpose; in which all the delinquents at any muster held during the year shall be noted; which delinquent report shall be returned to the regimental court of assessment of fines, by twelve o'clock of the day of holding such court, by every such commanding officer; which shall be considered good evidence against all delinquents therein returned; also, to make out and deliver to the commanding officers of their respective regiments or battalions, on the day of holding the regimental or battalion musters in the fall, a complete return of the companies under their command; at which muster, they shall cause the names of such persons as have been delinquents at any muster held during the year, to be read aloud; also, to obey all orders from their superior officers, and to do and perform such other duties as may appertain to their office. It shall also be the duty of all inferior officers, non-commissioned officers, musicians and privates, to go on parade at all musters so held at ten o'clock; and to do and perform such services as may, in anywise appertain to their respective stations.

SEC. 63. In case of the death, removal, absence or resignation of any superior officer, it shall be the duty of the next officer in rank attached to the same corps, to assume the command and perform all the duties that would have devolved on any such commanding officer, were he present; and to exercise the same until such superior officer shall return, or the vacancy be filled agreeably to the provisions of this chapter. In like manner, if it should happen at any time, that there is no commissioned officer belonging to any company, it shall be the duty of the senior non-commissioned officer of such company, to assume the command, under the same penalties that any superior officer of a company would be, were they present, for any neglect of their duties.

SEC. 64. There shall be observed in the several corps of militia in this State, a gradual and universal subordination of authority; and all inferior officers and privates shall obey all orders from their respective superior officers; but it is understood that orders are not to be manifestly against law or reason; and that nothing in this chapter, shall be so construed as to prevent any superior officer from taking the command, at any muster of the militia of this State.

SEC. 65. The adjutant general shall keep his office at the seat of government; and it shall be his duty to receive all certificates of elections for officers, to file the same in his office, to procure from the secretary of State the commissions of all officers duly elected or appointed; and within ten days after receiving any certificate of election or appointment, forward the commission to the officer by whom such certificate was transmitted; all which commissions shall be properly registered by him; also, to lay before the commander-in-chief, an abstract of the annual returns of the militia made to his office, and forward to the President of the United States, annually, a duplicate thereof; to perform the duties of inspector general, and distribute all orders from the commander-in-chief of the divisions, or other corps of militia; to attend all reviews with the commander-in-chief; to obey all orders from him relative to carrying into effect the provisions of this chapter, and to do and perform all other acts and duties which appertain to the office of adjutant general.

SEC. 66. It shall be the duty of the division inspector of each division, to act as assistant adjutant general, to distribute all orders from the commandants of divisions, or the adjutant general; attend all reviews with the major general; to record all orders received or issued by the major general; also, all returns and rank rolls received annually, from the several brigades composing their division; also, a detail of all detachments marched into service from their divisions, in a general order book kept for that purpose; also, to make out division returns, when required by the major general or any superior officer, and to perform such other duties as may appertain to their office.

SEC. 67. In addition to the services required of the brigade majors, it shall be their duty to attend all regimental musters, and all officer and drill musters held in the several regiments, or odd battalions not attached to a regiment, composing their respective brigades, to inspect the arms and equipments of all officers and privates at every such muster, and report all such as are delinquent, to the commanding officer present, to be handed to the next regimental court of assessment; also, to record all orders received or issued by the brigadier general; also, all returns and rank rolls received annually, from the several regiments and odd battalions composing their respective brigades, in a general order book kept for that purpose; to consolidate the annual returns and rank rolls received from the several officers commanding regiments and odd battalions in their brigades, into a brigade return; and on the first day of December, annually, transmit one copy to the major general of the division, and one to the adjutant general of the State; to keep a correct detail of all detachments marched from their brigade into service; to distribute all general orders; and to do and perform such other services as may be necessary for the discipline of the militia, and all other duties that may appertain to the office of brigade inspector.

SEC. 68. In addition to the services required of the adjutants of regiments or odd battalions, it shall be their duty to attend all regimental, drill and battalion musters, and courts martial, or courts of inquiry held in their respective regiments or battalions, (as the case may be;) to deliver all general and regimental orders; also, to record all orders received or issued by their respective commanding officers; also, all annual returns received by them, and the date of each officer's commission belonging to their regiment or battalion, noting the resignations, removals, or death of any officer, in an order book kept for that purpose; also, to make out under the direction of their commanding officers, regimental returns and rank rolls, and on the day of holding their annual court, forward such returns and rank rolls to the general of their respective brigades; to furnish the paymaster of the regiment with a duplicate of all lists of fines put into the hands of any constable for collection; also, at all regimental or drill musters, in case of the absence of the brigade major, to perform such duties as may be required of him at any such muster; also, at all regimental, battalion or drill musters, to form the regiment or battalion, (as the case may be,) by eleven o'clock, A. M., and immediately thereafter inform the commanding officer that the parade is ready; also, to keep a correct detail of all detachments marched into service from their regiments or battalions, (as the case may be,) and to do and perform such other duties as may be required of them by their superior officers, and all other duties that may appertain to the office of adjutant.

SEC. 69. It shall be the duty of the sergeant major to assist the adjutant in forming the regiment or battalion, (as the case may be,) at all musters; also, to assist

him in delivering all orders to the regiment, and to do such other services as he may be required to perform, or that may belong to the station of sergeant major.

SEC. 70. It shall be the duty of the quarter-master general, to apply for and receive all arms that are or may become due to this State from the general government, to deposit all arms so received, or which may have heretofore been received, and not otherwise disposed of, in some safe place at the seat of government of this State; also, to employ such means to preserve all such arms from damage, as in his opinion may, from time to time, become necessary; to furnish, when required so to do by any superior officer, a full exhibit of all the arms in his possession belonging to the State; also, to do and perform all other duties that may, in anywise appertain to the office of quarter-master general.

SEC. 71. All officers belonging to the general or regimental staff, whose duties are not defined particularly by this chapter, shall attend all musters held by their respective commanding officers, to obey all orders from them, or any superior officer, and to do and perform such other duties as may, in anywise appertain or belong to their respective stations.

SEC. 72. Each regimental paymaster appointed under the provisions of this chapter, shall, and is hereby required to give bond to the county commissioners of the county where he may reside, and their successors in office, with good and sufficient security, in the sum of two hundred dollars, conditioned for the faithful performance of his duty; which bond shall remain on file in the clerk's office of said commissioners, and be prosecuted on a failure in the conditions thereof, at the suit of the adjutant, in the same manner that a suit could be prosecuted against a sheriff or county treasurer for a failure of the conditions of his bond: it shall also be his duty to receive all money belonging to his regiment or odd battalion, (as the case may be,) which he shall only pay out by an order from the regimental court; taking at all times, proper vouchers for any moneys so paid; to attend all courts of inquiry held in his regiment or battalion, and lay before the board an account of the finances of the regiment, stating particularly all moneys received and paid out, with his several proceedings relative to the duties of his office; and all accounts so exhibited and settled by the board, shall be entered by the adjutant on his order book: and to do and perform such other services as may be required, or which may, in anywise appertain to the office of paymaster.

SEC. 73. If any paymaster shall neglect or refuse to pay over any moneys that may be in his hands, the adjutant of the regiment shall make an application in writing to the circuit court held in the proper county against such paymaster, setting forth the facts; and the adjutant shall give the said paymaster a copy of any such application five days before the session of said court; whereupon the court shall, at that term, proceed to render judgment against such paymaster and his securities, for the amount of such moneys so retained, with twenty per cent. added, and interest until paid, with costs of suit; and the testimony of the adjutant or other parol evidence of such delinquency, shall be sufficient for the court to render judgment; from which there shall be no appeal or stay of execution.

SEC. 74. When any necessary expense shall accrue in carrying into effect the provisions of this chapter, for the payment of which no provision is herein before made, the same shall be paid out of the contingent fund, by the order of the commander-in-chief.

SEC. 75. Whenever there is any new division or brigade created, the elections to fill such vacancies shall be held on the third Saturday of September; the elec-

tion to be held at the same places that the regimental musters are held, and conducted by the colonels or majors commanding odd battalions; and when there is no commissioned officer in the county, it shall be held by the sheriff, and advertised by him according to law; and when there is any county in the State that the militia is not organized, the sheriff of such county shall advertise and hold all such elections at the county seat, on the first Saturday in June; or if there be pressing necessity therefor, at any other time he may appoint.

SEC. 76. Whenever any volunteer or independent company shall be organized according to the laws of this State, it shall be lawful for such company, at any regular meeting thereof, to adopt a constitution and by-laws for the regulation and government of said company, which shall not be inconsistent with the constitution of the United States or of this State.

SEC. 77. It shall be the duty of the acting orderly sergeant of the company to keep a perfect and complete record of the constitution and by-laws of said company, which shall be signed by the acting captain of the company, and countersigned by the acting orderly sergeant, and said constitution and by-laws shall, at all times, be subject to the inspection of any member of the company, and of all militia officers, and any person interested therein.

SEC. 78. Said constitution and by-laws may fix the fines and penalties which shall be imposed on any member of the company for an infraction of any of the provisions of said constitution or by-laws, and may also fix the fines which shall be imposed on any member for a failure to parade at any muster which may be called, according to the constitution or by-laws of the company.

SEC. 79. No company shall be entitled to any of the benefits hereof, which shall not provide in its constitution or by-laws for company musters at least once in each year.

SEC. 80. When any member of the company shall have been guilty of a violation of any of the provisions of the constitution or by-laws of the company, and a fine shall have been assessed on him in accordance with the provisions of said constitution and by-laws, it shall be the duty of the acting orderly sergeant of the company, or in case he is interested, then of the next sergeant of the company, to demand of such member said fine, and in case of his neglect or refusal to pay the same, it shall be lawful to bring suit for the same in the name of the company before any justice of the peace of the county, subject to an appeal to the circuit court, as in cases of debt or assumpsit: *Provided, however,* That when said suit shall be brought, security for costs shall be given by some responsible person or persons, in case said suit shall be determined against said company.

SEC. 81. It shall be sufficient evidence that the constitution or by-laws have been regularly adopted if they are signed by the acting captain, and countersigned by the acting orderly sergeant of the company; and any member of said company may be a witness in all cases brought under the provisions of this law.

SEC. 82. All fines collected shall be received by the acting orderly sergeant or acting captain of the company, and shall be used for the benefit and under the direction of the company.

SEC. 83. It shall be lawful for any two or more volunteer companies to organize themselves into an odd battalion, and elect their major and all other staff officers: *Provided,* The parade grounds of said companies are in the same county and not more than twenty-five miles apart, and in case there shall be four or more volunteer companies in one county, they may organize themselves into a regiment and

two battalions, and elect their colonel and staff officers in such manner as may be mutually agreed upon by the respective companies.

SEC. 84. Whenever any battalion or regiment shall become organized as aforesaid, it shall be lawful for the same to adopt a constitution and by-laws for their government, as is above provided for in the cases of companies, the acting colonel or major, (as the case may be,) supplying the place of the acting captain, and the acting adjutant the place of the orderly sergeant.

SEC. 85. Any person serving eight years in one or more volunteer or independent companies, shall be exempt from performing any military duty in time of peace, upon obtaining a certificate or certificates that he has faithfully discharged his duty as a member of said company.

APPROVED: March 3, 1845.

CHAPTER LXXI.

MILLS AND MILLERS.

SECTION

1. Persons desiring to erect mills and not owning lands on both sides of the stream, may have writ of *ad quod damnum*, to assess damages due to other owner.
2. Jury to be summoned, and notice given.
3. Jury to assess damages, and set apart the necessary quantity of land.
4. After return of jury, owner of lands to be taken, to be notified to appear at county commissioners' court, &c.
5. When writ may be had as to overflowing lands and endangering the public health.
6. When leave to erect dam not to be given; when to be given.

SECTION

7. Title to land acquired under inquiry to be perfected; how forfeited.
8. Inquest of jury not to bar action for damages subsequently ascertained.
9. Person failing to erect or keep in repair, his mill dam, to forfeit rights hereby conferred.
10. Public mills, what deemed.
11. Duty of millers, to grind, &c.; rates of toll.
12. Further duties, and fine for neglecting.
13. Miller, to what extent accountable for grain, &c., left at his mill.
14. Penalty for taking excess of toll.
15. Penalties, how sued for and recovered.

SECTION 1. When any person owning lands on one side of any stream or water course, the bed of which wholly or in part belongs to himself or herself, and may be desirous of building a water grist mill or saw mill on such lands, or of erecting any dam across such water course for that purpose, and shall not own the lands on the opposite side of such stream or water course, such person, on application to the county commissioners' court of the county where the opposite lands may lie, may obtain a writ of *ad quod damnum* to be issued, directed and proceeded on as is hereinafter directed: *Provided*, That notice in writing of such application be given four weeks before the said application, by personal service on the owner or owners of such lands, his, her or their agents, if to be found in the county, and if not, then by affixing such notice on the court house door of the county.

SEC. 2. The said writ shall be directed to the sheriff of the county in which the lands to be affected thereby may lie, commanding him to summon twelve good and lawful men of his county, to meet upon the lands in such writ named, on a day therein to be specified; and ten days' notice of the execution of such writ shall be given by the sheriff to the proprietor of such lands, as before directed in the case of

notices, unless the party, his, her or their agent were present in court when such writ was obtained.

SEC. 3. The jury so summoned, when met, shall be sworn and charged by the sheriff, impartially and to the best of their skill and judgment, to view the lands in the said writ described, and the lands above and below the proposed dam, and ascertain the damages, as by said writ directed, and shall locate and set apart, by metes and bounds, so much land as they may think necessary for the purpose of erecting such dam, not exceeding three acres, having due regard in such location, to the interest of both parties, and shall appraise the same at its true value; also, to examine the lands of other persons, which may probably be overflowed by the erection of such dam, and say what damage each owner will sustain thereby, and whether the dwelling house, out-house, orchard or garden of any such owner will be overflowed; and whether, in their opinion, the health of the neighborhood will be injuriously affected by such overflowing; which inquisition shall be made and signed by all the jurors, and returned by the sheriff, with the writ, to the next term of the court whence it issued.

SEC. 4. When the inquest aforesaid shall be taken, the party obtaining the same, shall notify the owner or owners of lands mentioned in such inquisition, whose lands are to be affected by the same, to appear at the next county commissioners' court and show cause why leave should not be granted to build such mill and dam; which notice shall be served as before directed.

SEC. 5. Any person wishing to build such mill, and to dam any water course, who may own the land on both sides of such stream, shall make application as aforesaid, to the court of the county where such mill is proposed to be erected, for a writ to examine as aforesaid, what lands may be thereby overflowed, and what damage will be sustained by the owner or owners of such lands, and whether the health of the neighborhood will be affected by such overflowing; which writ shall be issued, directed and returned as before prescribed.

SEC. 6. If, on such inquest, or other evidence, it shall appear to the court that the dwelling house of any proprietor, or any out-house, garden or orchard will be overflowed, or the health of the neighborhood impaired, they shall not give leave to erect such dam. If the said court shall judge it reasonable, and for the public benefit, they may give leave, and lay the party applying, under such regulations and restrictions in respect to the navigation of such stream, as they shall judge proper.

SEC. 7. If the party applying, obtain leave to build the said dam, he shall, on paying to the proprietor or proprietors of the lands located the damages assessed by the jury as aforesaid, become seized in fee of the land so located, to him, his heirs and assigns. But if he shall not, within one year thereafter, begin to build the said mill, and finish the same within three years, and afterwards keep it in good repair for the accommodation of the public, or in case the said mill or dam be destroyed, shall not begin to rebuild in one year after its destruction, and finish it in three years, the said land shall revert to the former owner and his heirs; unless at the time of such destruction the owner of such mill be an infant, or otherwise disabled in law; in which case the same time shall be allowed after such disability is removed.

SEC. 8. The inquest of the jury aforesaid, or the opinion of the court, shall not bar any prosecution or action which would otherwise be maintained in law, had this chapter never been passed, other than for such injuries as were foreseen and estimated by the jury.

SEC. 9. Any person, having obtained leave to erect any dam and mill as aforesaid, who shall neglect to finish the same within the time before prescribed in this chapter, or having erected such mill, shall fail to keep it in repair and running, for the accommodation of the public, for the space of one year, at any one time, shall forfeit all rights acquired by virtue of the provisions of this chapter.

SEC. 10. All mills now in operation, or which may hereafter be put in operation in this State, for grinding wheat, rye, corn or other grain, and which shall grind for toll, shall be deemed public mills.

SEC. 11. The owner or occupier of every public mill within this State, shall grind the grain brought to his mill as well as the nature and condition of his mill will permit, and in due turn as the same shall be brought, and may take for the toll, if a water mill or steam mill, for grinding and bolting wheat or rye, one-eighth part: for grinding Indian corn, oats, barley and buckwheat, not required to be bolted, one-seventh part: for grinding malt, and chopping all kinds of grain, one-eighth part: For an ox or a horse mill, for grinding and bolting wheat or rye into flour, one-fourth part: for grinding all other grain, one-fourth part, in full of all compensation: *Provided*, If the owner of any such grain, ground at an ox or horse mill, shall furnish team to grind the same, with the consent of the owner or occupier of such mill, the same toll shall be taken, as is allowed for a water or steam mill, and no more.

SEC. 12. It shall be the duty of each and every owner and occupier of every public mill, to give due and punctual attendance when his mill shall not be out of repair, and to aid and assist in loading and unloading all grain which shall be brought to him to be ground. And he shall keep in his mill an accurate half bushel measure, and an accurate set of toll dishes. And for a failure to perform any of the duties required by this chapter, every occupier of a public mill shall forfeit and pay the sum of five dollars, to the use of any person who will sue for the same, in any court having cognizance thereof.

SEC. 13. Every owner or occupier of a public mill as aforesaid, shall be accountable for the safe keeping of all grain received in his mill for the purpose of being ground, with the bags or casks containing the same; and shall, when required, deliver the same or the flour or meal thereof, to the owner or his or her agent or servant, with the bags or casks in which the same was received: *Provided*, That such miller shall not be accountable for any bags or casks, unless the same be distinctly marked with the initial letters of the owner's name; nor for the loss of grain, bags or casks, which happen by unavoidable accident.

SEC. 14. If any miller or the occupier of any mill, shall take a greater proportionate quantity of toll than is allowed by this chapter, or shall not sufficiently grind or grind and bolt, (as the case may be,) agreeably to the capacity of his mill, and in due time, as the same may have been brought, all grain received into such mill for the purpose of being ground, or ground and bolted, as directed by the owner, every miller of a public mill, so offending, shall forfeit and pay the sum of five dollars to the party injured, to be sued for and recovered as before provided for.

SEC. 15. All penalties under the provisions of this chapter may be sued for and recovered before any justice of the peace of the county where such penalties are incurred.

APPROVED: March 3, 1845.

CHAPTER LXXII.

NE EXEAT AND INJUNCTIONS.

SECTION

1. Writs of *ne exeat republica* may issue whether demand be actually due or not.
2. Co-obligor or joint debtor may have writ to compel payment or securing of proportion due from debtor about to remove; security may also have this writ against principal.
3. No writ granted without bill or petition filed, and bond given; suit on bond.
4. Writ to be issued by judge or clerk of circuit court, and made returnable thereto.
5. Writ shall be a summons to appear and answer bill; defendant to give bond not to leave the State; temporary absence not a breach.
6. Security may surrender principal in discharge of his liability.

SECTION

7. On return of writ, how court to proceed to examine.
8. *Ne exeat* and injunction, who may grant; writ not to issue for less than twenty dollars.
9. Return of writ, into what court.
10. In case of injunction to stay judgment at law, where proceedings may be had; subpoena may issue to any county.
11. Effect of injunction; not to issue without bond; conditions of bond.
12. Punishment for disobeying injunction.
13. On filing answer, court may dissolve injunction; may hear proof; on dissolution of injunction, complainant may have time to prove answer untrue; testimony, how taken and read.

SECTION 1. Writs of *ne exeat republica* may hereafter be granted, as well in cases where the debt or demand is not actually due, but exists fairly and *bona fide* in expectancy, at the time of making application, as in cases where the demand is due; and it shall not be necessary to authorize the granting of such writ of *ne exeat* that the applicant should show that his debt or demand is purely of an equitable character, and only cognizable before a court of equity.

SEC. 2. In case of joint, or joint and several obligors or debtors, if one or more of them be about to remove without the jurisdictional limits of this State, taking their property with them, leaving one or more co-obligors or co-debtors bound with them for the payment of any sum of money, or for the delivery of any article of property, or for the conveyance of land at a certain time, which time shall not have arrived at the time of such intended removal, such co-obligor or co-debtor who remains, shall be entitled on application, to a writ of *ne exeat*, to compel the co-obligor or co-debtor who is about to remove, to secure the payment of his part of the sum to be paid, or of the delivery of the property, or to convey or to join in the conveyance of the land. Also, in cases of security, the writ of *ne exeat* may issue on application of a security, against the principal or co-security, when the obligation or debt shall not be yet due, and the principal or co-security is about removing out of the State.

SEC. 3. No writ of *ne exeat* shall be granted but upon bill or petition filed, and affidavit to the truth of the allegations therein contained; upon the granting of any such writ, the court or judge granting the same, shall indorse or cause to be indorsed on the bill or petition, in what penalty bond and security shall be required of the defendant; and shall also, before issuing the said writ, take bond of the complainant, with good and sufficient security, in such sum as the said court or judge shall deem proper, conditioned that the said complainant will prosecute his bill or petition with effect; and that he will reimburse to the defendant, such damages and costs as he shall wrongfully sustain by occasion of the said writ. If any defendant to such

writ of *ne exeat* shall think himself aggrieved, he may bring suit on such bond; and if, on trial, it shall appear that such writ of *ne exeat* was prayed for without a just cause, the person injured shall recover damages, to be assessed as in other cases on penal bonds.

SEC. 4. All writs of *ne exeat* shall be returnable into the circuit court of the proper county; and when granted by a judge in vacation, may be issued under the hand of the judge; or the judge may direct the clerk of the said circuit court to issue the said writ, and to take bond of the complainant as is above required.

SEC. 5. The writ of *ne exeat* shall contain a summons for the defendant to appear in the circuit court and answer to the said petition or bill, and upon the same being served upon the said defendant, he shall give bond with surety, in the sum indorsed on such writ, conditioned that he will not depart the State without leave of the said court, and that he will render himself in execution to answer any judgment or decree which the said court may render against him; and in default of giving such security, he may be committed to jail as in other cases, for the want of bail; no temporary departure of the defendant from the State shall be considered as a breach of the condition of the said bond, if he shall return before personal appearance shall be necessary to answer or perform any judgment, order or decree of the said court.

SEC. 6. The surety in any bond for the defendant as aforesaid, may, at any time before the said bond shall be forfeited, surrender the said defendant in exoneration of himself in the same manner that bail may surrender their principal, and obtain the same discharge.

SEC. 7. On the return of the writ of *ne exeat*, if the same shall have been duly served, the court shall proceed therein as in other cases in chancery, if the matters alleged in said bill be purely of an equitable character, and the time of performance of the duty or obligation of the defendant has expired; if not, then the proceedings shall be stayed until it has expired; but the court may, nevertheless, proceed to determine whether the said writ ought not to be quashed or set aside.

SEC. 8. The supreme and circuit courts, in term time, and any judge thereof in vacation, shall have power to grant writs of *ne exeat* and injunction. No writ of injunction shall be granted to stay proceedings under a judgment obtained before a justice of the peace, for a sum not exceeding twenty dollars besides the costs.

SEC. 9. When an injunction shall be granted by the supreme court, or a judge thereof, it shall be made returnable into the circuit of the proper county.

SEC. 10. When an injunction shall be granted to stay a suit or judgment at law, the proceedings shall be had in the county where the judgment was obtained, or the suit is pending; and the writ of subpoena may be sent in the first instance into any county within this State where the defendant resides.

SEC. 11. No injunction shall be granted to stay any judgment at law, for a greater sum than the complainant shall show himself equitably not bound to pay, and so much as shall be sufficient to cover costs: every injunction when granted, shall operate as a release of all errors in the proceedings at law, that are prayed to be enjoined. No injunction shall be issued, unless the complainant shall have previously executed a bond with sufficient surety, to the defendant, approved by the court or judge granting such injunction, and filed with the clerk, in double the sum, directed to be enjoined, conditioned for the payment of all money and costs due, or to be due to the plaintiff in the action at law; and also, all such costs and damages as shall be awarded against the complainant, in case the injunction shall be dissolved, or

such bond may be entered into before the clerk of the circuit court of the county where the writ is required to be issued, the court or judge granting the injunction, having first approved the security. If the injunction be dissolved in the whole or in part, the complainant shall pay, exclusive of legal interest and costs, such damages as the court shall award, not exceeding ten per centum, on such part as may be released from the injunction; and the clerk shall issue execution for the same, when he issues execution upon such judgment.

SEC. 12. If any person against whom a writ of injunction shall be issued, shall, after the service thereof, be guilty of disobedience to and breach of the said injunction, it shall be lawful for the judge granting the same, or if the same were granted in open court, then for any judge of that court in vacation, to issue an attachment against the said person for a contempt. Upon his being brought before the said judge, unless he shall disprove or purge the said contempt, the said judge may, in his discretion, commit him to jail until the sitting of the court in which the said injunction is pending, or take bail for his appearance in the said court at the next term thereof, to answer for the said contempt, and to abide the order of the court thereon.

SEC. 13. Upon the filing of an answer, it shall be in order at any time in term, to move for the dissolution of the injunction; and upon such motion it shall be lawful for the parties to introduce testimony to support the bill and answer: the court shall decide such motion upon the weight of testimony, without being bound to take the answer as absolutely true. If, after such dissolution is moved for, the plaintiff in the bill will satisfy the court by his own affidavit, or the affidavit of any disinterested person, that the answer, or any material part thereof, (to be specified in such affidavit,) is untrue, and that he has witnesses whose testimony he believes he can procure by the next term of the court, who will disprove the said answer, or such material part thereof as shall be specified as aforesaid, and that he has had no opportunity to procure such testimony since the coming in of the answer, it shall be lawful for the court to grant a continuance of the said motion, until the next term. The testimony to be heard on such motions, aside from the bill and answer, shall be by depositions in writing, taken as in other cases in chancery proceedings, except the affidavits which may have been filed with the bill or answer, which may be read on such motion as heretofore; and the depositions taken to dissolve an injunction, may be read on the final hearing of the cause in which they have been taken.

APPROVED: March 3, 1845.

CHAPTER LXXIII.

NEGOTIABLE INSTRUMENTS.

SECTION

1. Ten per cent. damages on foreign bills protested.
2. Five per cent. damages on inland bills protested.
3. Construction and effect of note, &c., in writing.
4. Notes, &c., assignable by indorsement.
5. Assignees of notes, &c., may bring suit in his own name or otherwise.
6. Payment by maker to payee after assignment, not to be alleged as a defence against assignees.
7. Assignor, how liable; due diligence necessary in collecting from the maker; *proviso*, if suit against maker would be unavailing, need not be brought in order to make indorser liable.

SECTION

8. If note, &c., be indorsed over after it is due, demands against original payee may be set off.
9. Payments made on note, &c., before due, may be set off against assignee, if he had notice of such payment.
10. Failure of consideration, in whole or in part, may be pleaded; right of *bona fide* assignee not affected by failure of consideration.
11. Fraud in procuring note may be pleaded in bar.
12. If note, &c., be for the delivery of property, how delivery or tender may be made.
13. Legal tender to discharge maker from liability; property vested in payee; what, if property be perishable.

SECTION 1. When any foreign bill of exchange, which may be drawn for any sum of money, expressed that the value has been received, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest from the time such bill ought to have been paid, until paid, and ten per cent. damages, in addition, together with the costs and charges of protest.

SEC. 2. If any bill of exchange drawn upon any person, or body politic or corporate, out of this State, but within the United States or their territories, for the payment of money, and expressed to be value received, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest from the time such bill ought to have been paid, until paid, and five per cent. damages, in addition, together with costs and charges of protest.

SEC. 3. All promissory notes, bonds, due-bills and other instruments in writing, made or to be made, by any person or persons, body politic or corporate, whereby such person or persons promise or agree to pay any sum of money or articles of personal property, or any sum of money in personal property, or acknowledge any sum of money or article of personal property to be due to any other person or persons, shall be taken to be due and payable; and the sum of money or article of personal property therein mentioned, shall, by virtue thereof, be due and payable to the person or persons to whom the said note, bond, bill or other instrument in writing is made.

SEC. 4. Any such note, bond, bill or other instrument in writing, made payable to any person or persons, shall be assignable, by indorsement thereon, under the hand or hands of such person or persons, and of his, her or their assignee or assignees, in the same manner as bills of exchange are, so as absolutely to transfer and vest the property thereof, in each and every assignee or assignees successively.

SEC. 5. Any assignee or assignees, to whom such sum of money or personal property is, by such indorsement or indorsements, made payable, or in case of the death of such assignee or assignees, his, her or their executors or administrators, may, in his, her or their own name or names, institute and maintain the same kind of action for the recovery thereof, against the person or persons who made and executed any such note, bond, bill or other instrument in writing, or against his, her or their heirs, executors or administrators, as might have been maintained against him, her or them, by the obligee or payee, in case the same had not been assigned; and in every such action, in which judgment shall be given for the plaintiff or plaintiffs, he, she or they shall recover his, her or their damages and costs of suit, as in other cases.

SEC. 6. No maker of any such note, bond, bill or other instrument in writing, or other person liable thereon, shall be allowed to allege payment to the payee, made after notice of such assignment, as a defence against such assignee or assignees.

SEC. 7. Every assignor or assignors, or his, her or their heirs, executors or administrators, of every such note, bond, bill or other instrument in writing, shall be liable to the action of the assignee or assignees thereof, or his, her or their executors or administrators, if such assignee or assignees shall have used due diligence, by the institution and prosecution of a suit against the maker or makers of such assigned note, bond, bill or other instrument of writing, or against his, her or their heirs, executors or administrators, for the recovery of the money or property due thereon, or damages in lieu thereof: *Provided*, That if the institution of such suit would have been unavailing, or that the maker or makers had absconded, or left the State, when such assigned note, bond, bill or other instrument in writing became due, such assignee or assignees, or his or her executors or administrators, may recover against the assignor or assignors, or against his or their heirs, executors or administrators, as if due diligence by suit had been used.

SEC. 8. If any such note, bond, bill or other instrument in writing, shall be indorsed after the day on which the money or property therein mentioned, becomes due and payable, and the indorsee shall institute an action thereon against the maker and signer of the same, the defendant being maker and signer, shall be allowed to set up the same defence that he might have done, had the said action been instituted in the name and for the use of the person or persons to whom the said note, bond, bill or other instrument in writing was originally made due and payable.

SEC. 9. If any such note, bond, bill or other instrument of writing shall be indorsed before the day the money or property therein mentioned, becomes due and payable, and the indorsee shall institute an action thereon, the defendant may give in evidence at the trial, any money or property actually paid on the said note, bond, bill or other instrument in writing, before the said note, bond, bill or other instrument in writing was indorsed or assigned to the plaintiff, on proving that the plaintiff had sufficient notice of the said payment, before he or she accepted or received such indorsement.

SEC. 10. In any action commenced, or which may hereafter be commenced, in any court of law in this State, upon any note, bond, bill or other instrument in writing, for the payment of money or property, or the performance of covenants or conditions by the obligee or payee thereof, if such note, bond, bill or instrument in writing was made or entered into without a good or valuable consideration; or, if the consideration upon which such note, bond, bill or instrument in writing was made or entered into, has wholly or in part failed, it shall be lawful for the defen-

dant or defendants against whom such action shall have been commenced by such obligee or payee, to plead such want of consideration, or that the consideration has wholly or in part failed; and if it shall appear that any such note, bond, bill or instrument of writing was made or entered into without a good or valuable consideration, or that the consideration has wholly failed, the verdict shall be for the defendant; and if it shall appear that the consideration has failed in part, the plaintiff shall recover according to the equity of the case: *Provided*, That nothing in this section contained, shall be construed to affect or impair the right of any *bona fide* assignee or assignees, of any instrument made assignable by this chapter, when such assignment was made before such instrument became due.

SEC. 11. If any fraud or circumvention be used, in obtaining the making or executing of any of the instruments aforesaid, such fraud or circumvention may be pleaded in bar to any action to be brought on any such instrument so obtained, whether such action be brought by the party committing such fraud or circumvention, or any assignee or assignees of such instrument.

SEC. 12. In all cases when any of the before mentioned instruments of writing are for the payment or delivery of personal property, other than money, and no particular place be specified in such instruments of writing, for the payment or delivery thereof, it shall be lawful for the maker of any such instrument of writing, to tender or cause to be tendered, on the day mentioned in any such instrument, the personal property therein mentioned, at the place where the obligee or payee of any such instrument resided at the time of the execution thereof: *Provided, however*, If such personal property be too ponderous to be easily moved, or if the obligee or payee of such instrument, had not at the time of the execution of such instrument of writing, a known place of residence in the county where the maker or makers resided, then it shall be lawful to tender such personal property at the place where the maker or makers of such instrument resided at the time of the execution thereof. Any tender made in pursuance of this section, shall be equally valid and legal, in case any such instrument of writing shall have been assigned in pursuance of the first section of this chapter, as if no such assignment had been made.

SEC. 13. A legal tender of any such personal property, shall discharge the maker of any such instrument from all liability thereon; and the property thus tendered, is hereby declared to be vested in and belong to the legal holder and owner of any such instrument of writing, and he may maintain an action for the recovery thereof, or for damages, if the possession be subsequently illegally withheld from him: *Provided, however*, If any such property so tendered, shall be of a perishable nature, or shall require feeding or other sustentation, and the person owning and holding such instrument of writing, be absent at the time of tendering the same, it shall be lawful for every person making such tender, to preserve, feed and otherwise take care of the same; and he shall have a lien on such tendered property, for his reasonable trouble, and the expense of feeding or sustaining such property, until payment be made for such trouble and expense.

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CHAPTER LXXIV.

NEGROES, MULATTOES, &c.

SECTION

1. On what condition negroes, mulattoes, &c., may reside in this State; bond to be given; certificate to be given by clerk.
2. Penalty for harboring negro not having certificate.
3. Negroes, on procuring certificate, to register their families; jurisdiction of overseers of the poor, reserved.
4. Free negroes to register certificate of freedom.
5. Negro not having certificate, how dealt with.
6. Suits for freedom, when to be dismissed.
7. Servant fulfilling time, to have free papers recorded; copy thereof, evidence of freedom.
8. Penalty for bringing slaves into this State for the purpose of liberating them.
9. Servant, &c., more than ten miles from home, may be apprehended.
10. Slave intruding upon plantation, how punished.
11. Unlawful assemblies of servants, punishable.

SECTION

12. Penalty for permitting revelling, &c., of slaves.
13. Duty of sundry officers to arrest disorderly persons.
14. Whipping, when substituted for fine.
15. Penalty for trafficking with slaves.
16. Disorderly conduct, how punished.
17. Contracts between masters and servants, void.
18. Contract for service, how assignable.
19. Negroes, mulattoes and Indians, not to own white servants.
20. Servants to be fed and clothed by masters.
21. If servants acquire property, they may hold the same to their own use; masters to support servants, if sick or lame; master putting away slave when sick, to pay his expenses.
22. Circuit court shall receive complaints of servants, and of masters, and try same.
23. Persons of different colors, unlawfully cohabiting together, how punishable.

SECTION 1. No black or mulatto person, shall be permitted to reside in this State, until such person shall produce to the county commissioners' court where he or she is desirous of settling, a certificate of his or her freedom; which certificate shall be duly authenticated in the same manner that is required to be done, in cases arising under the acts and judicial proceedings of other States. And until such person shall have given bond, with sufficient security, to the people of this State, for the use of the proper county, in the penal sum of one thousand dollars, conditioned that such person will not, at any time, become a charge to said county, or any other county of this State, as a poor person, and that such person shall, at all times, demean himself or herself, in strict conformity with the laws of this State, that now are or hereafter may be enacted; the solvency of said security shall be approved by said clerk. The clerk shall file said bond, and if said bond shall in any condition thereof be broken, the whole penalty shall become forfeited, and the clerk, on being informed thereof, shall cause the said bond to be prosecuted to effect. And it shall be the duty of such clerk to make an entry of the certificate so produced and indorse a certificate on the original certificate, stating the time the said bond was approved and filed; and the name and description of the person producing the same; after which it shall be lawful for such free negro or mulatto to reside in this State.

SEC. 2. If any person shall harbor such negro or mulatto as aforesaid, not having such certificate, and given bond, and taken a certificate thereof, or shall hire, or in anywise give sustenance to such negro or mulatto, not having such certificate of freedom, and of having given bond, shall be fined in the sum of five hundred dollars, one-half thereof to the use of the county, and the other half to the party giving information thereof: *Provided*, This section shall not affect any negro or mulatto who is now a resident of this State.

SEC. 3. It shall be the duty of all free negroes and mulattoes who shall come to reside in this State, having a family of his or her own, and having a certificate as mentioned in the first section of this chapter, to give to the clerk of the county commissioners' court, at the time of making an entry of his certificate, a description, with the name and ages of his, her, or their family, which shall be stated by the clerk in the entry made by him of such certificate; and the clerk shall also state the same on the original certificate: *Provided, however,* That nothing contained in this or the preceding section of this chapter, shall be construed to prevent the overseers of the poor in any township from causing any such free negro or mulatto to be removed, who shall come into this State contrary to the provisions of the laws concerning the poor.

SEC. 4. Every black or mulatto person (slaves and persons held to service excepted) residing in this State, shall enter his or her name, (unless they have heretofore entered the same,) together with the name or names of his or her family, with the clerk of the county commissioners' court of the county in which they reside, together with the evidence of his or her freedom; which shall be entered on record by the said clerk, together with a description of all such persons; and thereafter the clerk's certificate of such record shall be sufficient evidence of his or her freedom: *Provided,* That nothing in this chapter contained, shall be construed to bar the lawful claim of any person or persons to any such negro or mulatto.

SEC. 5. Every black or mulatto person who shall be found in this State, and not having such a certificate as is required by this chapter, shall be deemed a runaway slave or servant, and it shall be lawful for any inhabitant of this State, to take such black or mulatto person before some justice of the peace, and should such black or mulatto person not produce such certificate as aforesaid, it shall be the duty of such justice to cause such black or mulatto person to be committed to the custody of the sheriff of the county, who shall keep such black or mulatto person, and in three days after receiving him, shall advertise him, at the court house door, and shall transmit a notice, and cause the same to be advertised for six weeks in some public newspaper printed nearest to the place of apprehending such black person or mulatto, stating a description of the most remarkable features of the supposed runaway, and if such person so committed shall not produce a certificate or other evidence of his freedom, within the time aforesaid, it shall be the duty of the sheriff to hire him out for the best price he can get, after having given five days previous notice thereof, from month to month, for the space of one year; and if no owner shall appear and substantiate his claim before the expiration of the year, the sheriff shall give a certificate to such black or mulatto person, who, on producing the same to the next circuit court of the county, may obtain a certificate from the court, stating the facts, and the person shall be deemed a free person, unless he shall be lawfully claimed by his proper owner or owners thereafter. And as a reward to the taker up of such negro, there shall be paid by the owner, if any, before he shall receive him from the sheriff, ten dollars, and the owner shall pay to the sheriff for the justice, two dollars, and reasonable costs for taking such runaway, to the sheriff, and also pay the sheriff all fees for keeping such runaway, as other prisoners: *Provided, however,* That the proper owner, if any there be, shall be entitled to the hire of any such runaway from the sheriff, after deducting the expenses of the same: *And, provided also,* That the taker up shall have a right to claim any reward which the owner shall have offered for the apprehension of such runaway:

Should any taker up claim any such offered reward, he shall not be entitled to the allowance made by this section.

SEC. 6. If any negro or mulatto, being the property of a citizen of the United States, residing without this State, shall hereafter come into this State for the purpose of hiring himself or herself, to labor in this State, and shall afterwards institute, or procure to be instituted, any suit or proceedings, for the purpose of procuring his or her freedom, it shall be the duty of the court before which such suit or proceeding shall be instituted and pending, upon being satisfied that such negro or mulatto had come into this State for the purpose aforesaid, to dismiss such suit or proceeding, and cause the same to be certified to the sheriff of the county, who shall immediately take possession of such negro or mulatto, whose duty shall be to confine such negro or mulatto in the jail of his county, and notify the owner of such slave of the commitment aforesaid, and that said owner make immediate application for said slave; and it shall be the duty of the sheriff, on such application being made, after all reasonable costs and charges being paid, to deliver to said owner such negro or mulatto slave.

SEC. 7. Every servant, upon the expiration of his or her time, and proof thereof made before the circuit court of the county where he or she last served, shall have his or her freedom recorded, and a certificate thereof, under the hand of the clerk, which shall be sufficient to indemnify any person for entertaining or hiring such servant; and if such certificate should happen to be torn or lost, the clerk, upon request, shall issue another, reciting therein the loss of the former.

SEC. 8. Any person who shall hereafter bring into this State any black or mulatto person, in order to free him or her from slavery, or shall directly or indirectly bring into this State, or aid or assist any person in bringing any such black and mulatto person to settle or reside therein, shall be fined one hundred dollars, on conviction on indictment, or before any justice of the peace in the county where such offence shall be committed.

SEC. 9. If any slave or servant shall be found at a distance of ten miles from the tenement of his or her master, or the person with whom he or she lives, without a pass, or some letter or token, whereby it may appear that he or she is proceeding by authority from his or her master, employer or overseer, it shall and may be lawful for any person to apprehend and carry him or her before a justice of the peace, to be by his order punished with stripes, not exceeding thirty-five at his discretion.

SEC. 10. If any slave or servant shall presume to come and be upon the plantation, or at the dwelling of any person whatsoever, without leave from his or her owner, not being sent upon lawful business, it shall be lawful for the owner of such plantation, or dwelling house, to give or order such slave or servant ten lashes on his or her bare back.

SEC. 11. Riots, routs, unlawful assemblies, trespasses and seditious speeches, by any slave or slaves, servant or servants, shall be punished with stripes, at the discretion of a justice of the peace, not exceeding thirty-nine, and he who will, may apprehend and carry him, her or them before such justice.

SEC. 12. If any person or persons shall permit or suffer any slave or slaves, servant or servants of color, to the number of three or more, to assemble in his, her or their out-house, yard or shed, for the purpose of dancing or revelling, either by night or by day, the person or persons so offending shall forfeit and pay the sum of twenty dollars with costs, to any person or persons who will sue for and recover

the same by action of debt or by indictment, in any court of record, proper to try the same.

SEC. 13. It shall be the duty of all coroners, sheriffs, judges and justices of the peace, who shall see or know of, or be informed of any such assemblage of slaves or servants, immediately to commit such slaves or servants to the jail of the county, and on view or proof thereof, order each and every such slave or servant to be whipped, not exceeding thirty-nine stripes, on his or her bare back, on the day next succeeding such assemblage, unless it shall happen on a Sunday, then on the Monday following; which said stripes shall be inflicted by any constable of the township, if there should be one therein, or otherwise, by any person or persons whom the said justices shall appoint, and who shall be willing so to inflict the same: *Provided, however,* That the provisions hereof shall not apply to any persons of color who may assemble for the purpose of amusement, by permission of their masters, first had in writing, on condition that no disorderly conduct is made use of by them in such assemblage.

SEC. 14. In all cases of penal laws, where free persons are punishable by fine, servants shall be punished by whipping, after the rate of twenty lashes for every eight dollars, so that no servant shall receive more than forty lashes at any one time unless such offender can procure some person to pay the fine.

SEC. 15. No person shall buy, sell, or receive of, to or from any servant or slave, any coin or commodity, without leave or consent of the master or owner of such slave or servant, and any person so offending shall forfeit and pay to the master or owner of such slave or servant four times the value of the thing so bought, sold or received, to be recovered with costs of suit, before any court having cognizance of the same.

SEC. 16. Any such servant being lazy, disorderly, guilty of misbehavior to his master or master's family, shall be corrected by stripes, on order from a justice of the county wherein he resides; or refusing to work, shall be compelled thereto in like manner, and moreover shall serve two days for every one he shall have so refused to serve, or shall otherwise have lost, without sufficient justification. All necessary expenses incurred by any master for apprehending and bringing home any absconding servant, shall be repaid by further services, after such rates as the circuit court of the county shall direct, unless such servant shall give security, to be approved by the court, for the payment in money within six months after he shall be free from service, and shall accordingly pay the same.

SEC. 17. All contracts between masters and servants, during the time of service, shall be void.

SEC. 18. The benefit of any contract of service shall be assignable by the master to any person being a citizen of this State, to whom the servant shall, in the presence of a justice of the peace, freely consent that it shall be assigned, the said justice attesting such free consent in writing; and shall also pass to the executors, administrators and legatees of the master.

SEC. 19. No negro, mulatto or Indian, shall at any time purchase any servant, other than of his own complexion; and if any of the persons aforesaid shall nevertheless, presume to purchase a white servant, such servant shall immediately become free, and shall be so held, deemed and taken.

SEC. 20. Servants shall be provided by the master with wholesome and sufficient food, clothing and lodging, and at the end of their service, if they shall not have contracted for any reward, food, clothing and lodging, shall receive from him

one new and complete suit of clothing, suited to the season of the year, to-wit: a coat, waistcoat, pair of breeches and shoes, two pair of stockings, two shirts, a hat and blanket.

SEC. 21. If any servants shall at any time bring in goods or money during the time of their service, shall by gift or other lawful means, acquire goods, or money, they shall have the property and benefit thereof to their own use; and if any servant shall be sick or lame, and so become useless or chargeable, his or her master or owner shall maintain such servant until his or her time of service shall be expired; and if any master or owner shall put away any lame or sick servant, under pretence of freedom, and such servant becomes chargeable to the county, such master or owner shall forfeit and pay thirty dollars to the overseers of the poor of the county wherein such offence shall be committed, to the use of the poor of the county, recoverable with costs, by action of debt, in any circuit court; and moreover, shall be liable to the action of the said overseers of the poor at the common law for damages.

SEC. 22. The circuit court of every county shall, at all times, receive the complaints of servants, being citizens of any of the United States of America, who reside within the jurisdiction of such court, against their masters or mistresses, alleging undeserved or immoderate correction, insufficient allowances of food, raiment or lodging or any failure in the duties of such master or mistress as prescribed in this chapter, and the said circuit court shall hear and determine complaints of masters and mistresses against their servants, for desertion without good cause, and may oblige the latter, for loss thereby occasioned, to make restitution by further services after the expiration of the time for which they had been bound.

SEC. 23. Any black, colored or mulatto man and white woman, and any white man and black, colored or mulatto woman, who shall live together in an open state of adultery or fornication, or adultery and fornication, shall be indicted, and on conviction, severally fined, in any sum not exceeding five hundred dollars, and confined in the penitentiary for a term not exceeding one year. For the second offence, the punishment shall be double; for the third, trebled, and in the same ratio for each succeeding offence.

APPROVED: March 3, 1845.

CHAPTER LXXV.

NOTARIES PUBLIC.

SECTION

1. Governor to appoint notaries public; when additional notaries may be appointed.
2. Vacancies, how filled.
3. Notary to surrender papers, &c., to successor; how punished for refusal.
4. Duty of, as to protests; notice to indorsers, &c.

SECTION

5. To keep record of business done, such record to be competent evidence.
6. Manner of serving notices; when in person; when by mail.
7. Notary to give bond to Governor; suit may be had on bond for use of party injured.

SECTION 1. The Governor of the State, by and with the advice and consent of the senate, shall appoint and commission one notary public in each county in the

State. And whenever fifty legal voters of any city, town, village or township in this State, shall, by petition to the Governor, request the appointment of a notary public in such city, town, village or township, the Governor shall, by and with the advice and consent of the senate, appoint a notary public conformably to such petition; but no more than five shall be appointed in any one city, town, village or township, and not more than one shall be appointed on the same petition, and such petition shall be signed by different voters. An additional notary public may also be appointed in any county, whenever it shall be petitioned for as above provided; but not more than one notary public shall be appointed in the same precinct of any county except in the case of cities, &c., and the said notaries public, when so appointed, shall hold their offices for four years, and until their successors are appointed and qualified.

SEC. 2. If a vacancy shall occur in the office of notary public during the recess of the senate, the Governor shall fill such vacancy by appointment.

SEC. 3. Whenever the successor of any notary public shall be appointed and qualified, it shall be the duty of said notary public, to surrender to such successor, all books, papers, vouchers and other documents belonging to his office. Any notary public who shall neglect or refuse to surrender all the books, papers and vouchers, for ten days after the same shall have been demanded by his successor, may be indicted, and on conviction, shall be fined, in a sum not exceeding one thousand dollars, and stand committed until paid.

SEC. 4. It shall be the duty of each and every notary public in this State, whenever any bill of exchange, promissory note or other written instrument, shall be by him protested for non-acceptance or non-payment, to give notice in writing thereof to the maker, and to each and every indorser of any bill of exchange, and to the maker or makers of, and each and every security or indorser of any promissory note or other written instrument, on the same day the said protest is made, or within forty-eight hours from the time of such protest.

SEC. 5. It shall be the duty of each and every notary public, to keep a correct record of all such notices, and of the time and manner in which the same shall have been served, and of the names of all the parties to whom the same were directed, and the description and amount of the instrument protested; which record shall, at all times be competent evidence to prove such notice, in any trial, before any court of this State, where proof of such notice may become requisite.

SEC. 6. It shall be the duty of each and every notary public, personally to serve the notice upon the person or persons protested against, provided he or they reside in the town where such protest was made, or within one mile thereof; but if such person or persons reside more than one mile from such town, then the said notice may be forwarded by mail or other safe conveyance.

SEC. 7. It shall be the duty of the Governor to take bond, with sufficient security, from each notary public, before he enters on the duties of his office, in the sum of five hundred dollars, conditioned for the due and faithful performance of the duties of his office, which bond shall be filed in the office of the secretary of State; and if forfeited, suit may be instituted thereon, for the use of the party injured by such forfeiture.

APPROVED: March 3, 1845.

CHAPTER LXXVI.

OATHS AND AFFIRMATIONS.

SECTION

1. Form and manner of swearing.
2. Persons having conscientious scruples, to be affirmed; false affirmation considered perjury.
3. Who may administer oaths, and on what occasions.

SECTION

4. Chairman of committee of either house of the General Assembly, may administer oaths.
5. False swearing under the provisions of this chapter, considered and punished as perjury.

SECTION 1. Whenever any person shall be required to take an oath before he enters upon the discharge of any office, place or business, or on any other lawful occasion, and such person shall declare that he or she has conscientious scruples about the present mode of administering oaths, by laying the hand on and kissing the gospels, it shall be lawful for any person empowered to administer the oath, to administer it in the following form, to-wit: the person swearing shall, with his or her hand uplifted, *swear by the ever living God*; and shall not be compelled to lay the hand on or kiss the gospels. And oaths so administered, shall be equally effectual, and subject such persons to the like pains and penalties for wilful and corrupt perjury, as oaths administered in the usual form.

SEC. 2. Whenever any person required to take or subscribe an oath as aforesaid, and in all cases where an oath is upon any lawful occasion to be administered, and such person shall have conscientious scruples against taking an oath, he or she shall be admitted instead of taking an oath, to make his or her solemn affirmation or declaration in the following form, to-wit: "*You do solemnly, sincerely, and truly declare and affirm;*" which solemn affirmation or declaration shall be equally valid as if such person had taken an oath in the usual form: and every person guilty of falsely and corruptly declaring as aforesaid, shall incur and suffer the like pains and penalties as are, or shall be inflicted, on persons convicted of wilful and corrupt perjury.

SEC. 3. All courts now established, or hereafter to be established, and each judge, justice and clerk thereof, and all justices of the peace and notaries public shall, respectively, have power to administer oaths and affirmations to witnesses and others, concerning any thing depending, or proceeding commenced, or to be commenced before them, respectively; and the said courts, the judges, justices, notaries public and clerks thereof, within their respective districts, circuits or counties, and the justices of the peace within their counties, shall respectively have power to administer all oaths of office, and other oaths required to be taken by any person before entering upon the discharge of the duties of any office, appointment, place or business, or any other lawful occasion, and to take affidavits and depositions concerning any matter or thing, process or proceeding, depending or to be commenced in any court, or before any justice of the peace, or on any occasion wherein such affidavits or depositions are authorized or required by law to be taken.

SEC. 4. The chairman, or any member of any committee appointed by either branch of the General Assembly of the State of Illinois, or any member of any joint committee appointed by the two houses of the General Assembly aforesaid, shall be authorized, under the direction of such committee, to administer oaths and affirmations to witnesses called before such committee, for the purpose of giving evidence touching any matter or thing which may be under the consideration or investigation of the committee; and oaths and affirmations, administered as aforesaid, shall be deemed and considered as having been administered lawfully.

SEC. 5. All oaths, affirmations, affidavits and depositions administered or taken as provided in this chapter, shall subject any person who shall so swear or affirm, wilfully and falsely, in matter material to any issue or point in question, to the like pains and penalties inflicted by law, for the time being, on persons convicted of wilful and corrupt perjury.

APPROVED: March 3, 1845.

CHAPTER LXXVII.

OFFICERS.

SECTION

1. What officers to reside at the seat of government.
2. Auditor to sue and defend in behalf of State; duty of attorney general.
3. Appeals allowed; auditor not personally bound.
4. When judgment is had against the State, how satisfied.

SECTION

5. Duty of certain officers to report defects in laws, and suggest amendments thereto.
6. Clerks of courts may appoint deputies.
7. Principal clerk, when able, to perform duties.
8. Clerk to reside at county seat.
9. If officer remove from county, his office to be vacated.

SECTION 1. The Governor, the secretary of State, the auditor, the treasurer, the clerk of the supreme court, and the attorney general shall keep their residence at the seat of government.

SEC. 2. It shall be lawful for the auditor of public accounts of the State of Illinois, to sue for any demand which the people of the State may have a right to claim, and to be sued and to sue, to plead and to be impleaded, to answer and to be answered, to defend and to be defended, in any court of record or other place, where justice shall be judicially administered, in the name of the auditor of public accounts, for the people of the State of Illinois: *Provided*, That the auditor shall not be liable to be sued in any other county than that in which the seat of government is situated. And the attorney general of this State shall prosecute and defend all suits brought by, or against the auditor of public accounts, as is prescribed by law.

SEC. 3. From all judgments so rendered, appeals may be taken to the supreme court; and it shall be the duty of the auditor to take such appeal, if in his opinion justice has not been done in the court where such judgment has been rendered; nor shall any judgment against the auditor, in his representative capacity, bind him personally, or be conclusive upon the State, until the same shall be examined by the

General Assembly. In cases of appeals by the auditor, he shall not be required to give bond or security, as in other cases.

SEC. 4. When judgment shall be rendered against the auditor of public accounts for the State of Illinois, it shall be his duty to forward a copy of such judgment and proceedings thereon, to the next General Assembly, and if approved by the same, an appropriation shall be made to satisfy the same, or such part thereof as the said General Assembly may deem just.

SEC. 5. It shall be the duty of each of the justices of the supreme court, the attorney general, the clerk of the supreme court, each of the prosecuting attorneys in the several circuit courts, the secretary of State, the auditor of public accounts, the treasurer of the State, the major, brigadier and adjutant generals, and each of them to make a report of all apparent defects, inconsistencies, omissions, unequal or oppressive laws, which each shall have discovered, to the speaker of the house of representatives, at the commencement of each and every session of the General Assembly, for the purpose of enabling it to make such amendments as will tend to perfect our code.

SEC. 6. The clerk of the supreme court, the several clerks of the circuit and county commissioners' courts may appoint deputies, who shall severally take an oath for the faithful discharge of the duties of their offices, and for whose conduct the principal clerk shall, in all cases, be responsible.

SEC. 7. The principal clerk shall, in all cases, attend in person to the duties of his office, when it is practicable, or when the duties of the office are not greater than can be performed by one person.

SEC. 8. Whenever any clerk as aforesaid, shall reside at such a distance from the seat of justice of his county, that he can not give his daily attendance to the duties of his office, and shall not, within six months from his election or appointment, remove to the county seat, or within such a distance that he can and will give his daily attendance to the duties of his office, the office shall be taken and deemed vacant; and the presiding judge of the circuit court, and the county commissioners' court, at their first session, after being informed of the fact, shall proceed to fill such vacancy.

SEC. 9. If any officer of a county shall remove from, and permanently reside out of the same, his office shall be deemed vacant, and such vacancy shall be filled as in other cases.

APPROVED: March 3, 1845.

CHAPTER LXXVIII.

OFFICIAL BONDS.

SECTION

1. Judge of circuit court to examine official bonds of sheriffs, &c., at each term of court; may require additional security.
2. County commissioners' courts to examine bonds of certain officers; may require additional security.
3. Probate justice to examine, periodically, the bonds of executors, &c.; may require new bond.
4. Person interested in official bond, may try sufficiency thereof.
5. Circuit courts to make record of examination of bonds.
6. If officer fail to give additional security when required, to be superceded.
7. Securities, how may be released from liability on official bond.

SECTION

8. Other security to be substituted in such case.
9. Time in which to file additional bond.
10. If bond not filed, office vacant.
11. When securities on old bond discharged; when those on new bond to become liable.
12. Embezzlement, how punished.
13. Officer failing to file new bond to deliver his papers, &c., to his securities.
14. Penalty for refusal, or for acting officially before giving new bond.
15. Securities on old bond, not released by the giving of new.
16. Principal and securities in bond may be sued jointly or severally.
17. Property of sureties not to be taken in execution until that of principal be exhausted.

SECTION 1. It shall be the duty of the presiding judge of the circuit court of each county in this State, at every term of said circuit court, on the first day of the term, in open court, to examine and inquire into the sufficiency of the official bonds of the sheriff, coroner and clerk of the circuit court; and if it shall appear that any one or more of the securities on the official bond of any such sheriff, coroner or clerk of the circuit court, has or have removed from the county, died or become insolvent, an order shall be entered of record, requiring such sheriff, coroner or clerk of the circuit court, to file in the office of the clerk of the circuit court a new bond to be approved and recorded as is now required by law, unless the number and pecuniary abilities of other securities on the bond shall be such as to satisfy the judge that the bond is sufficient, notwithstanding one or more of the securities may have removed, died or become insolvent, or of doubtful solvency, in which case the bond in question may, in the discretion of said judge, be held to be sufficient.

SEC. 2. It shall be the duty of the county commissioners' court at the regular June and December terms of said court, in each year, on the first day of the term, in open court, to examine and inquire into the sufficiency of the official bond of each probate justice of the peace, justice of the peace, constable, collector, county treasurer, recorder, and clerk of the county commissioners' court, and if it shall appear that any one or more of the securities on the official bond of any such probate justice of the peace, justice of the peace, constable, collector, county treasurer, recorder, or clerk of the county commissioners' court, has or have removed from the county, died or become insolvent, or of doubtful solvency, the said court shall cause such probate justice of the peace, constable, collector, county treasurer, recorder, or clerk of the county commissioners' court to be summoned to appear before said court on a day fixed therein, to show cause why he should not be required to give a new bond with security; and if at the appointed time he should fail to satisfy the court as to the sufficiency of the present security, an order shall be entered of rec-

ord, requiring such probate justice of the peace, justice of the peace, constable, collector, county treasurer, recorder, and clerk of the county commissioners' court, to file in the office of the clerk of the county commissioners' court, within thirty days, a new bond, to be approved as is now required by law, unless the number and pecuniary ability of other securities on the bond shall be such as to satisfy the court that the bond is sufficient, notwithstanding one or more of the securities on said bond may be removed, dead or insolvent, or of doubtful solvency; in which case the bond in question may, in the discretion of the court, be held to be sufficient.

SEC. 3. It shall be the duty of each probate justice of the peace, at two terms in each year, to be holden on the first Mondays in January and July, on the first day of the term, in open court, to examine and inquire into the sufficiency of the official bond of each executor, administrator, guardian, and of any other official bond that may be filed in his office; and if it shall appear that any one or more of the securities on the official bond of any such executor, administrator, guardian or other officer, has or have removed from the county, died or become insolvent, or of doubtful solvency, the said probate justice shall cause such executor, administrator, guardian or other officer, to be summoned to appear before him on a day to be named in said summons, to show cause why he should not be required to give a new bond with security; and if at the appointed time he should fail to satisfy such probate justice of the sufficiency of the present security, an order shall be made on the records of the probate justice of the peace, requiring such executor, administrator, guardian or other officer, to file in the office of the probate justice, a new bond, to be approved as is now required by law, unless the number and pecuniary ability of other securities on the bond shall be such as to satisfy the court that the bond is sufficient, notwithstanding one or more of the securities on said bond may be removed, dead or insolvent, in which case the bond in question may, in the discretion of the court, be held to be sufficient.

SEC. 4. Any person having any pecuniary interest in the sufficiency of the official bond of any of the officers hereinbefore named, may appear at the prescribed time and place, and shall be allowed to introduce any evidence legally conducing to prove the removal, death or insolvency, or doubtful solvency of any security on such official bond, and the officer interested or any of his securities, may also appear and introduce any evidence legally conducing to establish the sufficiency of such official bond.

SEC. 5. It shall be the duty of the respective courts above named, to enter upon their respective records, at the times hereinbefore prescribed for an examination, that an examination and inquiry into the sufficiency of the official bonds, within their cognizance has been made, and that they severally are deemed sufficient or insufficient, as the facts may justify.

SEC. 6. If any officer hereinbefore enumerated, shall fail to file a new bond within the prescribed time, when an order of the appropriate court entered of record shall require the filing of such new bond, the officer in default shall be deemed and held to have vacated his office, and the same steps shall be taken to fill such vacancy thus created as are now taken to fill a vacancy by the death or resignation of such officer.

SEC. 7. Any person who now is, or who hereafter may become the security of any sheriff, coroner or clerk of the county commissioners' court, shall have the power of releasing himself from such securityship, by filing with the clerk of the circuit court, a notice that he is unwilling longer to be security for said sheriff, coroner or clerk of county commissioners' court; and any person who now is, or here-

after may become security for any justice of the peace, probate justice of the peace, constable, school commissioner or collector of State and county revenue, clerk of the circuit court, may in like manner become released, by filing with the clerk of the county commissioners' court, a like notice.

SEC. 8. When any notice shall be filed as aforesaid with the clerk of the circuit court, he shall immediately give notice thereof to the sheriff, coroner or clerk of the county commissioners' court, as the case may be, who shall thereupon file other security, to be approved by the circuit court, if the same shall then be in session, or if a session thereof be commenced, within ten days after said notice shall have been given, but if said court be not in session, nor a session thereof be commenced within ten days, then the said sheriff or coroner shall, within ten days file said bond with the clerk of said court, which clerk shall, in that case, judge of the sufficiency of said bond, subject, however, to the decision of the judge of the circuit court as in other cases.

SEC. 9. When any notice shall be filed with the clerk of the county commissioners' court as aforesaid, he shall, in like manner, give notice to the justice, probate justice, constable, school commissioner or collector of State and county revenue, as the case may be, who shall, within ten days thereafter, file another bond, to be approved by said clerk.

SEC. 10. If said sheriff, coroner, justice, probate justice, constable, school commissioner or collector of State and county revenue, as the case may be, shall not, in the time and manner aforesaid, file bond, to be approved as aforesaid, the said office shall become vacant, and the said vacancy shall be filled as required by law.

SEC. 11. If a new bond shall be given by any officer, as provided in the foregoing sections of this chapter, then the former securities shall be entirely released and discharged from all liabilities incurred by any such officer in consequence of business which may have come to hand from and after the time of the approval of the said new bond, and the sureties to the new bond are hereby declared to be liable for all the official delinquencies of said officer, whether of omission or commission, which may occur after the approval of the new bond as aforesaid.

SEC. 12. If any sheriff, coroner, justice of the peace, probate justice of the peace, constable, school commissioner or collector of State and county revenue, shall embezzle or appropriate to his own use, any money which may be paid them by virtue of their offices, they shall be liable to be indicted therefor, and upon conviction thereof, the court shall pass judgment that the office held by such officer shall be vacated; and a new election shall be held to fill the vacancy thereby created.

SEC. 13. It shall be the duty of such sheriff, coroner, justice of the peace, probate justice of the peace, constable, school commissioner or collector of State and county revenue, if he shall fail to give bond as provided for in this chapter, to deliver over to his sureties forthwith, all books, moneys, vouchers, papers and every description of property whatever, pertaining to his said office, and the said sureties may, at any time after said failure to file said bond, maintain an action of replevin, or other appropriate action, to recover such property, money or effects from their said principal.

SEC. 14. If any officer designated in the foregoing sections of this chapter, shall fail to deliver any money, property or effects as aforesaid, to his securities, or shall act, or attempt to act in his said office after failing to give a new bond as aforesaid, he shall be deemed guilty of a high misdemeanor, and upon indictment and conviction

tion therefor, shall be fined, in any sum not less than five hundred dollars nor more than five thousand dollars.

SEC. 15. The provisions of this chapter shall not be so construed as to operate as a release of the securities of any of the aforesaid officers, for liabilities incurred previous to the filing of a new bond as required in the foregoing sections of this chapter.

SEC. 16. Whenever the condition of the bond of any public officer, shall be violated, suit may be instituted on such bond, and prosecuted to final judgment against such officer, and any or all of the securities, or against one or more of them, jointly and severally, without first establishing the liability of the principal, by obtaining judgment against him alone.

SEC. 17. Execution may issue on any judgment so rendered as in ordinary cases, but the officer executing the same shall not levy upon the property of the sureties until he shall fail to find sufficient property of the principal, to satisfy such execution: *Provided, however,* The judgment and execution shall be a lien upon the property of the sureties, as in ordinary cases.

APPROVED: March 3, 1845.

CHAPTER LXXIX.

PARTITIONS.

SECTION

1. When lands held in joint tenancy, &c., any person interested may, by petition to the proper court, have partition and sale.
2. Petition, what facts to set out.
3. Who shall be made parties.
4. If persons in interest be unknown, or their interest uncertain, that fact to be set out in petition.
5. How such unknown persons to be made parties.
6. How they may be summoned; non-resident parties, how notified.
7. Any person interested, may become party defendant by interpleader.

SECTION

8. Court to try cause and determine the interest of the respective parties.
9. Court ordering partition, to appoint commissioners; their duty; their report, and order of the court thereon.
10. Compensation of commissioners.
11. When lands, &c., can not be properly divided, to be sold, and proceeds divided; proceedings thereon to be reported; order of court.
12. Unclaimed moneys to be deposited in the State treasury, to be drawn by order of court.
13. Claimants of such money, to preserve same by order of court.
14. Plea in abatement, not allowed.

SECTION 1. When any lands, tenements or hereditaments, shall be held in joint tenancy, tenancy in common or coparcenery, whether such right or title be derived by purchase, devise or descent, or whether any, all or a part of such claimants be of full age, or minors, it shall be lawful for any one or more of the persons interested, by themselves, if of full age, or by their guardians, if minors, to present to the circuit court of the county where such lands or tenements lie, or where the lands or tenements lie in different counties, in the circuit court of the county in which the major part of such lands lie; but if the major part of such lands do not lie in any one county, then to the circuit court of any county in which any of such lands lie, their petition, praying for a division and partition of such premises, according to the

respective rights of the parties interested therein, and for a sale thereof, if it shall appear that partition can not be made without great prejudice to the owners.

SEC. 2. The petition shall particularly describe the premises sought to be divided or sold, and shall set forth and make exhibits of the rights and titles of all parties interested therein, so far as the same are known to the petitioners, including tenants for years, for life, by the courtesy, or in dower; and of persons entitled to the reversion, remainder or inheritance; and of every person, who, upon any contingency, may be or become entitled to any beneficial interest in the premises, so far as the same are known to the petitioners; and such petition shall be verified by affidavit.

SEC. 3. Every person having such interest, as is specified in this chapter, whether in possession or otherwise, and every person entitled to dower in such premises, if the same has not been admeasured, shall be made a party to such petition.

SEC. 4. In cases where one or more of such parties shall be unknown, or the share or quantity of interest of any of the parties is unknown to the petitioner, or where such share or interest shall be uncertain or contingent, or the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be contingent, so that such parties can not be named, the same shall be so stated in the petition.

SEC. 5. All persons interested in the premises of which partition is sought to be made according to the provisions of this chapter, whose names are unknown, may be made parties to such petition, by the name and description of unknown owners or proprietors of the premises, or as the unknown heirs of any person who may have been interested in the same.

SEC. 6. All persons having such interest as is specified in this chapter, in any premises of which partition is sought to be made, or the guardians of such as are under age, who shall not have joined in the petition, (and if any person so interested, be under age and without a guardian, the court shall appoint a guardian *ad litem*, for such minor,) shall have notice of such application by summons duly served, which summons shall issue against such persons by the name and description given in the petition. And when the names of persons having any such interest in such premises are unknown, and when parties whose names are known do not reside in this State, or can not be found, they shall have further notice by advertisement as provided in sections eight, forty-one and forty-two of chapter twenty-one, and after such advertisement, the court shall proceed to act in the premises as though the parties had been duly served with summons, or had been notified by their proper names.

SEC. 7. During the pendency of any such suit or proceeding, any person claiming to be interested in the premises to be assigned or apated, may appear and answer the petition, and assert his or her rights, by way of interpleader; and the court shall decide upon the rights of persons appearing as aforesaid, as though they had been made parties in the first instance.

SEC. 8. The court shall ascertain from the evidence, in case of default, or from the confession by plea, of the parties, if they appear, or from the verdict, by which any issue of fact shall be determined, and shall declare the rights, titles and interests of all the parties to such proceedings, petitioners as well as defendants, and give such judgment as may be required by the rights of the parties.

SEC. 9. The court, when it shall order a partition of any premises to be made, under the provisions of this chapter, shall appoint three commissioners, not connec-

ted with any of the parties, either by consanguinity or affinity, and entirely disinterested; each of whom shall take an oath before the court, or some justice of the peace, fairly and impartially to make partition of said lands, in accordance with the judgment of the court, as to the rights and interests of parties, if the same can be done consistently with the interests of the estate: and the said commissioners shall go upon the premises and make partition of said lands, tenements and hereditaments, assigning to each party, his or her share, by metes and bounds; and may make report, which shall be under their hands and seals, to the court, during the same or next succeeding term, at which they were appointed; and the court may, at the term when such report shall be made, make all such orders upon such reports as may be necessary to a final disposition of the case.

SEC. 10. The commissioners to be appointed under this chapter, shall be allowed as a compensation for their services, one dollar per day each, to be taxed as other costs.

SEC. 11. When any lands, houses or lots, are so circumstanced that a division thereof can not be made without manifest prejudice to the proprietors of the same, and the commissioners appointed to divide the same, shall so report to the court, the court shall thereupon give an order to said commissioners, or other person or persons, to sell such lands, houses and lots, or houses and lots, at public vendue, upon such terms, and by giving notice of sale as the court shall direct; and who shall make and execute good and sufficient conveyance or conveyances to the purchaser or purchasers thereof, which shall operate as an effectual bar, both in law and equity, against such owners or proprietors, and all persons claiming under them: and the commissioners or persons making such sale, shall report their proceedings to the court, and shall pay over the moneys arising therefrom, to the parties entitled to receive the same, under the direction of the court: the court to make such order in relation to costs as shall seem right.

SEC. 12. When a sale of any lands or premises shall be made, in accordance with the preceding section, and no person shall appear to claim such portions of the money as may belong to any non-resident or person whose name is unknown, the court shall, thereupon, require the money belonging to the persons not claiming as aforesaid, to be deposited in the treasury of the State, subject to the further order of the court; and all money required to be deposited as aforesaid, shall be received by the State treasurer, and paid out upon the order of the court.

SEC. 13. When money shall be deposited in the State treasury under the provisions of this chapter, the person or persons entitled to the same may, at any time, apply to the court making the order of sale, and obtain an order for the same, upon making satisfactory proof to the court of his, or her, or their right thereto.

SEC. 14. No plea in abatement shall be received in any suit for partition, nor shall such suit abate by the death of any tenant.

APPROVED: March 3, 1845.

CHAPTER LXXX.

PAUPERS.

SECTION

1. Who considered paupers, what relatives to support each other; penalty for neglect; *proviso*.
2. Order in which relatives shall be liable.
3. When pauper has no relatives, how relieved.
4. If non-resident pauper be sick, or die, expenses, how paid.
5. Who shall be overseers of the poor.
6. Duty of overseers; poor, how provided for; duty of persons taking them to support.
7. Overseers to report to county commissioners' court.
8. Duty of court, as to allowance to poor person.
9. Sum may be lessened or increased without affecting validity of the bond.
10. Overseers may change custody of poor person.
11. As to labor of pauper.
12. Residence of pauper, how ascertained.

SECTION

13. Non-resident pauper may be removed to proper county.
14. Liability of such proper county.
15. Term "residence" defined.
16. Penalty for conveying pauper into county in which he is not resident.
17. Poor houses to be established.
18. Land therefor, may be acquired and held.
19. County commissioners may receive donations for poor-houses; may levy tax for same purpose.
20. May employ agents.
21. When poor-house established, overseers of poor superseded.
22. Title of estate to be in county.
23. County commissioners may purchase farm for poor-house establishment.

SECTION 1. Every poor person who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy or other unavoidable cause, shall be supported by the father, grand-father, mother, grand-mother, children, grand-children, brothers or sisters of such poor person, if they or either of them be of sufficient ability. And every person who shall fail or refuse to support his or her father, grand-father, mother, grand-mother, child or grand-child, sister or brother, when directed by the county commissioners' court of the county where such poor person shall be found, whether such relative reside in the same county or not, shall forfeit and pay to the said county commissioners, for the use of the poor of their county, the sum of five dollars for every month for which they or either of them shall fail or refuse, to be recovered in the name of the county commissioners' court, for the use of the poor as aforesaid, before any justice of the peace, or any other court having jurisdiction: *Provided*, That when any persons become paupers from intemperance or other bad conduct, they shall not be entitled to support from any relation, except parent or child.

SEC. 2. The children shall first be called on to support their parents, if there be children of sufficient ability, and if there be none of sufficient ability, the parents of such poor person shall be next called on, and if there be no parents or children, the brothers and sisters of such poor person shall next be called on, and if there be no brothers or sisters, the grand-children of such poor person shall next be called on, and then the grand-parents: *Provided*, Married females, whilst their husbands live, shall not be liable to a suit.

SEC. 3. When any such poor person shall not have any such relatives in any county in this State, as are named in the preceding sections, or such relative shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as his or her case may require, out of the county treasury, in the manner hereinafter provided.

SEC. 4. When any non-resident, or any other person not coming within the definition of a pauper, shall fall sick or die in any county of this State, not having money or property to pay his board, nursing and medical aid, it shall be the duty of the

overseers of the poor of the proper district, or if their be none, then of the nearest county commissioner of the county, upon complaint being made, to give or order to be given such assistance to such poor person as they may deem just and necessary; and if said sick person shall die, then the said overseers or county commissioner shall give or order to be given to such person, a decent burial: and the said overseers or county commissioners shall make such allowance for board, nursing, medical aid or burial expenses as they shall deem just and equitable; which allowance shall be laid before the county commissioners' court, and the said court shall allow either the whole, or such reasonable and just part thereof as ought to be allowed, and order the same to be paid out of the county treasury.

SEC. 5. The justices of the peace in each justice's district, in conjunction with such other person as the county commissioners in the several counties in this State, may appoint, shall be, and are hereby made, overseers of the poor, and are vested with the entire and exclusive superintendence of the poor in their respective districts, excepting in case of corporate towns or cities, to which such superintendence and jurisdiction shall be by law granted.

SEC. 6. It shall be the duty of said justices within their respective districts, and the person appointed as aforesaid, diligently to inquire after all such persons as are unable to earn a livelihood, in consequence of any bodily infirmity, idiocy, lunacy or other unavoidable cause, and to provide for them the necessary comforts of life, by confiding the care of such poor person or persons to some moral and discreet householder or householders in the district, of sufficient ability to provide for them. Every person to whom the care of such poor person shall be committed, shall execute a bond to the county in which said poor person shall reside, conditioned that he will treat said poor person with humanity, and afford to him or her the necessary attention and comforts of life, fitted to his or her condition. Said bond shall set forth the sum to be given by said county for keeping such poor person or persons.

SEC. 7. Said overseers shall, at each session of the county commissioners' court, make a full report of their actings and doings under this chapter, and return a list of all the poor within their respective districts, specifying the age, sex and infirmities of each.

SEC. 8. Upon the making of said report, it shall be the duty of the several county commissioners' courts, to make such appropriations as will justify the person having the custody of any poor person, in affording to him or her suitable clothing, and such comforts as may be suitable to their state and condition.

SEC. 9. Any sum set forth in the bond executed by any county as aforesaid, may be lessened or increased at the discretion of said county, without affecting, in either case, the validity of the bond.

SEC. 10. The county commissioners' court may, at any regular term of said court, remove any poor person from the custody of the person or persons to whose care the overseers may have committed the keeping of such poor person, without subjecting the overseers or the county, to any claim for damages.

SEC. 11. The overseers, in fixing the amount to be paid for keeping any poor person, shall take into the calculation the ability of the poor person to labor.

SEC. 12. Any person becoming chargeable as a pauper in this State, shall be chargeable as such pauper in the county in which he or she resided at the commencement of the thirty days immediately preceding such person becoming so chargeable.

SEC. 13. If any person shall become chargeable in any county in which he or she did not reside at the commencement of the thirty days immediately preceding

his or her becoming so chargeable, he or she shall be duly taken care of by the proper authority of the county where he or she may be found; and it shall be the duty of the clerk of the county commissioners' court, to send notice by mail, to the clerk of the county commissioners' court of the county in which such pauper resided, as before stated, that said person has become chargeable as a pauper, and requesting the authorities of said county to remove the said pauper forthwith, and to pay the expense accrued in taking care of him or them.

SEC. 14. If said pauper, by reason of sickness or disease, or by neglect of the authorities of the county to which he or she belongs, or for any other sufficient cause, can not be moved, then the county taking charge of such individual or individuals may sue for and recover from the county to which said individual or individuals belong, the amount expended for and in behalf of such pauper or paupers, and in taking care of the same.

SEC. 15. The term "residence" mentioned in this chapter, shall be taken and considered to mean the actual residence of the party, or the place where he or she was employed, or in case he or she was in no employment, then it shall be considered and held to be the place where he made it his or her home.

SEC. 16. If any person shall bring and leave any pauper or paupers in any county in this State, wherein such pauper is not lawfully settled, knowing him or them to be paupers, he shall forfeit and pay the sum of one hundred dollars for every such offence, to be sued for and recovered by and to the use of such county, by action of debt, before any justice of the peace in the proper county.

SEC. 17. The county commissioners' court in each county, is hereby authorized (whenever it shall see fit so to do) to establish a poor-house.

SEC. 18. The county commissioners are hereby authorized to take to the county, by grant, devise or purchase, any tract of land, not exceeding six hundred and forty acres, for the purposes of said poor-house.

SEC. 19. Said county commissioners' courts are hereby empowered to receive donations to aid in the establishment of such poor-house, and are also empowered, from time to time, if it shall see fit, to levy and collect a tax, not exceeding one-fourth of one per cent., on the taxable property of the county, and to appropriate the same to the purchase of land, not exceeding the aforesaid six hundred and forty acres, and to erect and furnish buildings suitable to a poor-house, and to put it into operation, and to defray the annual expenses of said poor-house, should the labors of the inmates be inadequate thereto.

SEC. 20. Said county commissioners' courts are hereby authorized to employ such agents and other persons as may be necessary, to establish and put into operation such poor-house.

SEC. 21. Whenever any county commissioners' court shall enter upon their records, that they have established a poor-house, and that such poor-house is ready for the reception of the poor of the county, then the authority conferred upon the overseers of the poor, shall cease to be in force in said county: *Provided, however,* If there be any particular case or cases which the court should deem prudent to put out under the provisions of this chapter, they may do so, making a proper entry of the circumstances upon their records.

SEC. 22. The title to the property authorized to be acquired by this chapter, for the purpose of said poor-house, shall be made to the county.

SEC. 23. The county commissioners' court of any county in this State may, if they shall at any time deem it to the interest of said county, appropriate out of any

fund appropriated to said county for any purpose, or other money belonging to said county, any sum, not exceeding two thousand five hundred dollars, for the purpose of purchasing a farm, and erecting thereon suitable buildings for a poor-house for said county, as contemplated in sections seventeen, eighteen and nineteen of this chapter.

APPROVED: March 3, 1845.

CHAPTER LXXXI.

PENITENTIARY.

SECTION

1. Governor to appoint inspectors of the penitentiary; to hold office for two years.
2. Their powers and duties.
3. To keep minutes and report to General Assembly.
4. May appoint warden, and other officers.
5. Warden may appoint prison guards.
6. If labor of convicts be not sufficient for their support, State to pay deficit.
7. Salary of warden.
8. Inspectors to meet once in each month; shall keep minutes.
9. One inspector to visit penitentiary once in each week.
10. Warden to report once in each month.
11. Police regulations and discipline.
12. Each convict to have a bible.
13. List and particular description of each convict to be kept in a book.
14. Convicts may be paid for extra work.
15. Weekly record made, of behavior and health of convicts.
16. Compensation for extra work, how applied.
17. Inspectors not to have pecuniary interest.
18. Inspectors and warden to be sworn.
19. Each inspector to give bond.
20. Warden to give bond.
21. Spirituous liquors forbidden.
22. Inspectors may lease penitentiary,

SECTION

23. Lease not to affect pardoning power.
24. No right to remove prisoners to another building.
25. Copies of lease, how disposed of.
26. Lessee, on becoming warden, to be sworn.
27. Lease not transferable except by written consent.
28. Proposals for leasing, to be received.
29. Warden, unless he be the lessee, not to be interested, &c.
30. Governor may remove inspector for misconduct, and appoint a successor.
31. On leasing, inventory of personal property to be made.
32. How such property disposed of.
33. If penitentiary be not leased, how expenses paid, and convicts employed.
34. Compensation of inspectors.
35. Convicts, how and where confined; convicts, how and by whom conveyed to penitentiary; duty of sheriff.
36. Sheriff; conveying convicts, to employ guards; duty and compensation of sheriff.
37. Duty of warden, &c., as to receiving and safely keeping convicts.
38. Warden, how punished for violation of duty.
39. Flogging, when to be inflicted.
40. Warden to be treasurer of the penitentiary; to keep books; make monthly reports.

SECTION 1. The Governor, by and with the advice and consent of the senate, shall appoint three inspectors of the penitentiary, who shall hold their offices for the term of two years, and until others are in like manner appointed and qualified.

SEC. 2. The said inspectors, or a majority of them, shall have power, and it shall be their duty, from time to time, to examine and inquire into all matters connected with the government, discipline and police of the penitentiary at Alton, which is committed to their care; the punishment and employment of the prisoners therein confined; the moneyed concerns and contracts for work to complete the penitentiary, and the purchase and sale of the articles provided for the said penitentiary, or sold on the account thereof: they shall have power to make rules and regulations for the management of the said penitentiary and the officers therein employed, and to require the warden, from time to time, to render a minute and

full account of all the expenditures, with the receipts and other transactions of and concerning the said penitentiary.

SEC. 3. The said inspectors shall keep regular minutes of their proceedings, and shall, at the meeting of each General Assembly, make a full report of the situation of the said penitentiary, and all things connected with the management of the same, the number of prisoners confined therein, the accounts, both of receipts and expenditures, and all proceedings by them as inspectors of the penitentiary for the preceding two years.

SEC. 4. The inspectors of the penitentiary are authorized and empowered to appoint a warden, and all inferior officers and agents in the said penitentiary, to superintend and manage the affairs of the same. The inspectors shall have power to revoke the appointment of the warden and inferior officers and agents whenever, in their opinion, the interests of the State shall require it; but, unless so revoked, he shall hold his office for the term of two years, and until his successor is appointed and qualified.

SEC. 5. For the purpose of preventing the escape of convicts, the warden, with the approbation of the inspectors, may employ three able-bodied and trusty men as prison-guards, who shall alternately, under the direction of the warden, guard the prisoners, as well by night as by day; which number of prison-guards may be increased by the inspectors when the increased number of convicts shall render it necessary: *Provided*, That not more than three guards shall be employed, unless the number of convicts shall amount to forty.

SEC. 6. On failure to realize from the labor of the convicts confined in said penitentiary, a sum sufficient to defray the incidental expenses of the same and support the convicts, the inspectors shall have power to draw on the auditor for a sum, not exceeding fifteen hundred dollars per annum, to supply the deficiency.

SEC. 7. The warden shall receive a salary, at the rate of one thousand dollars a year, payable quarterly out of any money in the treasury not otherwise appropriated; but if any convicts shall escape from said penitentiary during his continuance in office, a deduction of thirty dollars shall be made from his salary, for every convict so escaping.

SEC. 8. The inspectors shall meet at the penitentiary on the first Monday of every month, at such hour as they shall appoint. They shall appoint one of their number to act as secretary, who shall enter in a book to be provided for the purpose, all orders, regulations and other transactions of the board.

SEC. 9. One of the inspectors, to be designated by the board, shall visit the penitentiary once a week; and each inspector may visit the penitentiary as often as he shall think necessary.

SEC. 10. At every monthly meeting of the board of inspectors, the superintendent shall make a report of the receipts, expenses and condition of the penitentiary during the preceding month.

SEC. 11. The inspectors shall establish and maintain a rigid system of police in the penitentiary; and, so far as practicable, they shall prevent any conversation between the convicts.

SEC. 12. The inspectors are authorized to furnish at the expense of the State, a copy of the bible to each convict who is able and willing to read the same.

SEC. 13. The warden is authorized, under the direction of the inspectors, to procure at the expense of the State, a book or books, in which he shall keep a descriptive list of all the convicts, stating their age, place of birth, place and time of

conviction, crime of which they were convicted, duration of sentence, time of reception into the penitentiary, trade, business or profession, former habits of life, whether married or unmarried, and such other particulars as the inspectors may direct.

SEC. 14. The inspectors are authorized, if, in their opinion, the public interest will be promoted thereby, to cause a separate account to be opened by the warden with each convict, in which such convict shall be credited with all the extra work which he may perform, and charged for all the time he may lose by refusal to labor, or misconduct of any kind.

SEC. 15. At the close of each week, the warden shall make an entry in a book to be kept for that purpose, of the good or bad behavior of each convict during the week; also, of the state of such convict's health, and such other particulars as, in the opinion of the inspectors, it may be useful for them to know.

SEC. 16. The inspectors are authorized, if they shall deem it expedient, to allow compensation to the convicts for work performed over and above the quantity usually required of workmen, such compensation to be applied, under the direction of the inspectors, in supplying such convicts with useful reading; to the support of their families, if they have any; or it may be placed to their credit, and paid to them when they are discharged from the penitentiary.

SEC. 17. No inspector of the penitentiary shall become personally interested, either directly or indirectly, in any purchase, sale, lease or contract of any kind, to be entered into by the board of inspectors, on behalf of the State, with any person or persons whomsoever, under a penalty of two hundred dollars.

SEC. 18. Before entering upon the duties of their respective offices, the inspectors and warden of the penitentiary shall severally take and subscribe an oath to support the constitution of the United States and of this State, and faithfully to perform the duties of their respective offices according to law and to the best of their ability. Such oaths may be administered by any judge, justice of the peace or notary public, of this State, and shall be transmitted by the inspectors to the secretary of State, and filed in his office.

SEC. 19. Each of the inspectors of the penitentiary, before entering upon the duties of his office, shall execute a bond to the Governor, for the use of the people of this State, in the penal sum of five thousand dollars, with sufficient sureties, to be approved by the judge of the second judicial circuit, with the condition that such inspector shall faithfully perform the duties of his office according to law; which bond shall be transmitted by the inspectors, to the secretary of State, and filed in his office.

SEC. 20. The warden of the penitentiary, before entering upon the duties of his office, shall execute a bond to the Governor, for the use of the people of this State, in the penal sum of ten thousand dollars, with sufficient sureties, approved by the judge of the second judicial circuit, conditioned that the said warden shall faithfully and truly perform the duties of said office according to law.

SEC. 21. No spirituous liquors shall be given or furnished to any convict, unless prescribed by a physician.

SEC. 22. The inspectors of the penitentiary are hereby authorized, if, in their opinion the interests of the State will be promoted thereby, to lease the penitentiary and the labor of the convicts, for a term of years, not exceeding three, to some qualified and responsible person, who shall thenceforth, during the continuance of the lease, be the warden of the penitentiary, and shall perform all the duties re-

quired of that officer by law; such lessee being required to furnish all necessary food, clothing and bedding for the convicts; to hire all the necessary guards; and in all respects, to manage the affairs of the penitentiary in such a manner as best to promote the reformation, improvement, and health of the convicts: *Provided*, That the penitentiary shall not be leased for a longer term than three years, nor upon any terms which will make the penitentiary a cost to the State.

SEC. 23. No contract shall be entered into by the inspectors with any lessee, which will restrain or affect the power of the Executive to pardon any convict confined in the penitentiary, or to grant the lessee any remuneration in consequence of the exercise of the pardoning power.

SEC. 24. No contract which may be entered into by the inspectors with any lessee, shall be so construed as to interfere with the right of the State to remove the convicts to another building hereafter to be erected; but the right to make such removal is hereby reserved, and when such removal shall have been made, the lease herein provided for shall no longer attach to the present penitentiary buildings but shall thenceforth attach and apply to such new penitentiary.

SEC. 25. Triplicate copies of such lease shall be executed by the parties; one copy of which shall be kept by the lessee, one retained by the inspectors, and the other copy shall be transmitted by them to the secretary of State, and filed in his office.

SEC. 26. The person who may become warden of the penitentiary, by virtue of a lease as herein provided, shall be required to take an oath of office, and give bond as in other cases, but shall receive no salary or other compensation, except such as shall be stipulated in such lease.

SEC. 27. No lease, entered into by the inspectors in pursuance of this chapter, shall be transferable by the lessee without the written assent of the inspectors.

SEC. 28. Before executing any lease of the penitentiary, and of the labor of the convicts, the inspectors shall appoint a day on which they will receive written proposals for such lease; and they shall cause four weeks' notice to be given of the same, by advertisement in the newspapers published at Alton, and in the newspaper published by the State printer. In deciding upon the proposals received, the inspectors shall take into consideration the qualifications and ability of the persons offering the same.

SEC. 29. No warden of the penitentiary, unless he is also the lessee thereof, shall become personally interested, either directly or indirectly, in any purchase, sale or contract to be entered into by the board of inspectors on behalf of the State, with any person or persons whomsoever, under a penalty of two hundred dollars.

SEC. 30. The Governor shall have power to remove from office any inspector of the penitentiary for misconduct or long continued neglect of the duties of his office, and to appoint another person to fill the vacancy until the end of the next succeeding session of the General Assembly.

SEC. 31. Whenever the inspectors shall lease the penitentiary, they shall make an inventory of all the tools and all the manufactured articles and raw materials belonging to the penitentiary, and fix upon them such prices as in their judgment they will readily sell for; a copy of which inventory shall be signed by the inspectors, and filed in the office of the auditor of public accounts.

SEC. 32. The lessee of the penitentiary may receive such property at said valuation, on a credit of one year, by securing the payment of the same. If he declines

to receive it on these terms, the inspectors shall have power to dispose of such property on the best terms they can procure.

SEC. 33. If the inspectors of the penitentiary shall fail to lease the penitentiary within a reasonable time, they shall be authorized to draw on the auditor of public accounts for a sum not exceeding three thousand dollars, payable out of any money in the treasury not otherwise appropriated; which sum shall be applied exclusively to the purchase of materials for making barrels and other articles, the manufacture of which, at the penitentiary, may be considered by the inspectors advantageous to the State.

SEC. 34. The said inspectors shall each receive the sum of two dollars per day, for each day they may be necessarily employed in the discharge of the duties of their office: *Provided*, That the same shall not exceed fifty dollars in the course of any one year.

SEC. 35. All persons sentenced to hard labor, or solitary imprisonment and hard labor, shall be imprisoned, restrained and employed in and within the precincts of the penitentiary, located at the city of Alton, in the county of Madison; and the court before whom any such conviction may be had, is hereby authorized and empowered by its order on the sheriff of the county where such conviction is had, to cause all such convicts, as soon as conveniently may be after sentence, to be removed from the jail of such county, to the said penitentiary; and the sheriff of the county in which such conviction may be had, is hereby authorized and required, by himself or his deputies, to remove such convicts to the penitentiary accordingly, and deliver such convict into the custody of the warden or other officer, who may have charge of said penitentiary; and the said sheriff or his deputies, shall have all the power of sheriffs and deputies in all counties in this State, which they may enter into or pass through for the purpose of conveying such convicts to the penitentiary aforesaid; and it shall be the duty of the clerk of the court before whom such conviction may be had, to make out and deliver to the sheriff of the county, a copy of said conviction and judgment and order thereon; and the said sheriff or deputy shall have an attested copy thereof, with a copy of his return thereon, with the warden or other officer having the charge or custody of said penitentiary, and the sheriff shall make due return to the court of their said order.

SEC. 36. It shall be the duty of the sheriff of the county where the conviction was had, to employ a sufficient force to guard all convicts to the penitentiary; and the sheriff shall be responsible for the safe delivery of such convicts. A failure to deliver the same, shall be a breach of duty in the official conduct of such sheriff, for which he may be indicted in any county, as in other cases of malconduct in office. The said sheriff shall be allowed thirty cents for each mile necessarily traveled in going to the penitentiary with each convict, when taken separately, but when more than one convict shall be sentenced to the penitentiary at the same term of the court, twenty-five cents per mile shall be allowed for the second, and the same compensation for any greater number of convicts sentenced at the same term of the court, to be paid out of the State treasury, on the warrant of the auditor, which shall be issued in favor of such sheriff, on the presentation of the warden's certificate that such convict or convicts had been delivered into his custody by such sheriff; and which shall be in full compensation for all charges and expenses of himself and guards, in conveying such convict or convicts to the penitentiary.

SEC. 37. It shall be the duty of the warden or officer having charge or custody of said penitentiary, to receive such persons as may be convicted, sentenced and

ordered to be imprisoned in said penitentiary, and them safely keep at hard labor, or solitary confinement and hard labor, within the precincts of said penitentiary, pursuant to their sentence, until their time shall fully expire, or they be otherwise discharged by due course of law. The said warden or officer having charge or custody of said penitentiary and the convicts therein confined, shall not, under any circumstances whatever, permit or suffer any convict to leave the prison or yard connected therewith, for any purpose whatever, excepting in working in the stone quarry belonging to the State and connected with said prison, at such times as additions may be making to the prison buildings or walls connected therewith; and in assisting in the conveyance of articles manufactured in the prison, to the landing in front of the penitentiary, and in the unloading of boats of such articles and materials as may be intended for the use of the penitentiary, and in the conveyance of any such articles to the same: *Provided, however,* That in case of any accident happening to the prison, or the walls thereof, the inspectors may permit and direct the removal of the convicts confined therein, or any part of the same, to any other place of security, for such length of time as they may deem necessary, or until such repairs shall be made to said prison; and in the event of any contagious disease breaking out among the convicts in said prison, the inspectors may, if they deem it necessary, order and direct that such diseased convict or convicts be removed to some safe and secure place, where they shall receive such medical treatment and nursing as their circumstances may require; and as soon as their health will permit, and the safety and health of the other convicts will not be endangered thereby, said convicts shall be returned to their confinement in said prison, to serve out their time pursuant to their sentence.

SEC. 38. If at any time the warden or officer having charge of said penitentiary, and the convicts confined therein shall violate any of the provisions of the foregoing section of this chapter, such officer shall, on conviction, be fined in a sum not less than five nor more than eight hundred dollars for each and every violation, and the judge of the second judicial circuit shall give this chapter in charge to the grand jury, at every term of the circuit court of Madison county.

SEC. 39. The using of the lash in the infliction of punishment upon convicts is hereby expressly forbidden, (unless sanctioned and ordered by the inspectors,) and it shall be their duty to examine into all disorderly conduct of the convicts, when requested by the warden, and when it shall appear that any convict has been disorderly, refractory or disobedient, they may order such corporeal punishment as they may deem necessary to enforce obedience, not inconsistent with humanity.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Act No. 19.]

CHAPTER LXXXII.

PETITIONS.

SECTION

1. Notice to be published, of all petitions to the General Assembly, which affect the rights of counties or persons.
2. No county to be divided, or county seat removed, unless a majority of voters petition.
3. State roads, notice to be given of intended petition to alter or create.

SECTION

4. How petition to be signed and proved; and by whom certified.
5. People of county in which road is to be made, to petition therefor.
6. Certificate of regular notice having been given, to be made by the county commissioners' clerk.

SECTION 1. No petition or petitions shall be finally acted upon by the General Assembly, which prays for a change of county lines, the erection of new counties, the removal of the seat of justice of any county, or which may affect the rights and interests of any person or persons, unless the petitioner or petitioners shall have given four weeks' notice in some newspaper printed in this State, and a copy of said advertisement shall be put up on the courthouse door in said county, at least two months before such petition or petitions shall be presented to the General Assembly.

SEC. 2. No county shall hereafter be divided, or county seat removed, unless it be done on a petition signed by a majority of the qualified voters of said county, so to be divided, or the county seat removed; which petition shall particularly describe the line or lines of division or curtailment so proposed, and the particular place to which such county seat is proposed to be removed.

SEC. 3. When any of the citizens of this State shall deem the establishment or relocation of any State road to be of public utility, they, or some two of them, shall give four weeks' public notice, by at least four written notices posted up in the most public place in each county in which the proposed location, change or alteration is about to take place, that they will petition the next session of the legislature to establish or relocate such road; in which notice a particular description of the road shall be set forth.

SEC. 4. At least fifty householders and citizens of the county or counties through which said road shall pass, are necessary to sign the petition; and before the petition shall be presented to the legislature, the persons giving said notice, or other credible persons, shall make affidavit of such advertisements having been made as required by the preceding section, before the clerk of the court of any county through which the road may pass; a certificate of which shall be given by the clerk and accompany the petition.

SEC. 5. No State road shall be established or relocated, except upon the petition of a portion of the citizens of the county in which the same is to be established or relocated.

SEC. 6. The clerks of the county commissioners' courts shall, severally, issue the certificates aforesaid, upon oath being made by any credible person that said notices were given according to the provisions of section three.

APPROVED: March 3, 1845.

CHAPTER LXXXIII.

PRACTICE.

SECTION

1. Summons, when to be first process; how issued, sealed, tested, dated; to whom directed; when returnable.
2. Suit to be brought in the county in which a party, either plaintiff or defendant resides, or where demand is payable; judgment not to go against defendants not resident of the county, unless against those who are.
3. Service of process, return, fees, &c.
4. In suits against corporations, service how made; not to affect suits against counties, or on special statutes.
5. When process not served in time, defendant entitled to continuance to succeeding term.
6. If first summons be not served, *alias*, &c., may successively issue; when part of defendants are served, how plaintiff to proceed; when defendants not served, made parties by *sci. fa.*; rights of such defendant on hearing of *sci. fa.*
7. Officer failing to make return, may be ruled to do so, and, refusing, attached.
8. Declaration, &c., to be filed ten days before court, or defendant entitled to continuance.
9. Clerk to keep docket; order in which entries shall be made; when subpoenas returnable.
10. Clerk fined for refusing to issue subpoenas.
11. When parties agree, law and fact may be tried by the court.
12. Power of court as to production of writings, &c.; defendant to file bill of particulars with plea.
13. Time to plead allowed; judgment by default, when taken; causes to be disposed of in their order on the docket; continuances for want of testimony, when and on what conditions granted.
14. Defendant may plead several pleas; may give notice of set-off; replications and rejoinders may be several, by special permission of the court; plea denying signature, to be verified by affidavit; executor, &c., may swear as to his belief.
15. When damages may be assessed by clerk; when by jury.
16. Default, court may set aside, on conditions.
17. Affidavits read, to be filed.
18. In actions on penal bonds, judgment to be for penalty and to stand security for damages to be assessed; as to damages assessed after first suit.
19. In action upon contract, defendant may set off counter demands.
20. Challenge of jurors in civil action; jury may take papers on retiring.
21. Exceptions to decision, how taken, sealed and made part of the record.
22. Exceptions, in what cases allowable.
23. Additional cases in which exceptions are permitted.
24. Verdict, how pronounced; form thereof; entry; party desiring to except, &c., to give notice

SECTION

- before entry of final judgment; not more than two trials granted; irregularity, verdict not set aside for, after close of same term.
25. Verdict good, if one count be good; faulty counts to be disregarded.
 26. In attachment cases, declaration to be filed as in other cases.
 27. Debtor may confess judgment; same to operate as a release of errors.
 28. Courts to instruct jury as to law only.
 29. Non-suit must be taken before jury retire.
 30. Papers read, though not under seal, may be taken by jury.
 31. Interpreters.
 32. If judgment be arrested, how cause to proceed.
 33. Form of commencing suit by petition.
 34. Form of noting assignments.
 35. Petition and summons, how served.
 36. Effect of petition; pleadings, trial and judgment.
 37. Bail in such case; form of affidavit to hold to bail.
 38. Costs, plaintiff not to recover after tender.
 39. Declaration not necessary on *sci. fa.*
 40. Fee books and fee bills to be made, and how.
 41. Incorrect fee bill void; if amount be paid, it may be recovered back; witnesses' names stated.
 42. Costs, &c., what part of inserted in docket book.
 43. Clerk of circuit court to keep judgment docket; entries therein; penalty, if clerk neglect duty.
 44. Officer neglecting to pay over money collected, how dealt with; punishment for contempt, &c.
 45. Clerk to make entry of officer's return.
 46. Stay of proceedings, how procured out of term.
 47. Appeals to supreme court, how taken; when to be prayed for; bond to be given; bond, when may be put in suit.
 48. Record to be filed in supreme court; within what time.
 49. Supreme court may give final judgment, and remand cause or issue execution.
 50. On dismissal of appeal or writ of error, duty of clerk of the court below.
 51. One party, plaintiff or defendant, may appeal.
 52. Partial reversal.
 53. Time limited, in which writ of error may be brought.
 54. *Supersedeas*, when writ of error to operate as; judgment.
 55. Equal division of supreme court, an affirmance.
 56. A scrawl deemed a seal.
 57. When appeal dismissed for want of prosecution, damages may be awarded for the delay.
 58. If appellee from judgment of justice fail to prosecute, he shall pay damages for the delay.
 59. Assignment of note, &c., need not be proved, unless put in issue on oath.

SECTION 1. The first process in all actions to be hereafter commenced in any of the circuit courts of this State, shall be a summons, except actions where special bail may be required: which summons shall be issued under the seal of the court, tested in the name of the clerk of such court, dated on the day it shall be issued, and signed with his name; and shall be directed to the sheriff, (or if he be interested in the suit,) to the coroner of the county; and shall be made returnable on the first day of the next circuit court in which the action may be commenced.

SEC. 2. It shall not be lawful for any plaintiff to sue a defendant out of the county where the latter resides, or may be found, except in cases where the debt, contract or cause of action accrued in the county of the plaintiff, or where the contract may have specifically been made payable; when it shall be lawful to sue in such county, and process may issue against the defendant to the sheriff of the county where he resides. And in every species of personal actions in law or equity, when there is more than one defendant, the plaintiff commencing his action, where either of them resides, may have a writ or writs issued, directed to any county or counties, where the other defendants or either of them may be found: *Provided*, That if a verdict shall not be found or judgment rendered against the defendant or defendants, resident in the county where the action is commenced, judgment shall not be rendered against those defendants who do not reside in the county, unless they appear and defend the action.

SEC. 3. It shall be the duty of the sheriff or coroner to serve all process of summons or *capias*, when it shall be practicable, ten days before the return day thereof, and to make return of such process to the clerk who issued the same, by or on the return day, with an indorsement of his service, the time of serving it and the amount of his fees: *Provided*, That when such process shall have been directed to a foreign county, the officer executing the same, may make return thereof by mail; and the clerk may charge the postage and tax the amount in his fee bill.

SEC. 4. In all suits instituted against any incorporated company in this State, a summons returned executed on the president thereof, or served by leaving a copy of the summons with the principal clerk, cashier or secretary of such company, at his office, within such time and under such regulations as are herein provided for the service of such process in suits against natural persons, shall be deemed a sufficient service whereon to ground subsequent proceedings and judgment against such company, in any court of this State having jurisdiction: *Provided*, That the provisions of this section shall not be construed to interfere with any mode of suing counties, or other corporations specially provided in any statute law of this State.

SEC. 5. If it shall not be in the power of such sheriff or coroner to serve such summons or *capias*, ten days before the return day thereof, he may execute the same at any time before or on the return day, but in such case the defendant or defendants shall be entitled to a continuance, and shall not be compelled to plead before the next succeeding term.

SEC. 6. Whenever it shall appear, by the return of the sheriff or coroner, that the defendant or defendants are not found, the clerk shall, at the request of the plaintiff, issue another summons or *capias*, (as the case may be,) and so on, until service be had, and the defendant or defendants be summoned or brought into court, and if such summons or *capias* be served on any one or more, but not on all of the defendants, the plaintiff or plaintiffs shall be at liberty to proceed to trial and judgment, in the same manner as if all the defendants were in court: and any judgment so obtained shall be valid against the defendant or defendants on whom the

process had been served, and the plaintiff or plaintiffs may, at any time afterwards, have a summons in the nature of a *scire facias*, against the defendant or defendants not served with the first process as aforesaid, to cause him, her or them to appear in the said court and show cause why he, she or they should not be made a party to such judgment, and the court shall thereupon proceed to hear and determine the matter in the same manner as if such defendant or defendants had been originally summoned or brought into court; and such defendant or defendants shall also be allowed the benefit of any payment which may have been made on the judgment before recovered, and the judgment of the court against the defendant or defendants in such case, shall be that the plaintiff or plaintiffs recover against such defendant or defendants, together with the defendant or defendants in the former judgment, the amount of his debt or damages as the case may be.

SEC. 7. If any sheriff or coroner to whom any summons or *capias* shall be delivered, shall neglect or refuse to make return of the same, before or on the return day of such process, the plaintiff may enter a rule requiring said sheriff or coroner to make return of such process on a day to be fixed by the court, or to show cause on that day, why he should not be attached for a contempt of the court; and the plaintiff shall, thereupon, cause a written notice of such rule to be served on such sheriff or coroner, and if good and sufficient cause be not shown to excuse such officer, the court shall adjudge him guilty of a contempt; and shall proceed to punish such officer as in other cases of contempt.

SEC. 8. If the plaintiff shall not file his declaration, together with a copy of the instrument of writing or account on which the action is brought, in case the same be brought on a written instrument or account, ten days before the court at which the summons or *capias* is made returnable, the court, on motion of the defendant, shall continue the cause at the cost of the plaintiff, unless it shall appear that the suit was commenced within ten days of the sitting of the court, in which case the cause shall be continued without costs, unless the parties shall agree to have a trial, and if no declaration shall be filed ten days before the second term of the court, the defendant shall be entitled to a judgment as in case of a nonsuit.

SEC. 9. The clerks of the circuit courts shall keep a docket of all the causes pending in their respective courts, in which shall be entered the names of the parties, the cause of action, and the name of the plaintiff's attorney, and he shall furnish the judge and bar at each term, with a copy of the same, in which all indictments and causes to which the people may be a party, shall be first set down, after which shall be set down all cases in law in order, according to the date of their commencement, and lastly, the suits in chancery: and the clerk shall also set and apporportion the causes for as many days of the term as he may think necessary, or be directed by the judge; and all subpoenas for witnesses shall be made returnable on the day on which the cause in which the witnesses are to be called, is set for trial.

SEC. 10. The clerks shall, from time to time, issue subpoenas for such witnesses as may be required by either party, returnable on the day for which the cause in which they are required to attend, is set for trial, and every clerk who shall refuse so to do, shall be fined at the discretion of the court, in any sum not exceeding one hundred dollars.

SEC. 11. In all cases pending in any circuit court of this State, if both the parties shall agree, both matters of law and fact may be tried by the court.

SEC. 12. The several circuit courts shall have power, in any action pending before them, upon motion, and good and sufficient cause shown, and reasonable notice

thereof given, to require the parties or either of them, to produce books or writings in their possession or power, which contain evidence pertinent to the issue; and it shall be the duty of the defendant or defendants, in all cases where he, she or they intend to prove, on the trial, any accounts or demands against the plaintiff or plaintiffs, to file with his plea, a bill of the particular items of such accounts or demands, and no other accounts or demands shall be suffered to be proved to the jury.

SEC. 13. On the appearance of the defendant or defendants, the court may allow such time to plead as may be deemed reasonable and necessary, and for want of appearance, may give judgment by default on calling the cause, except in cases where the process has not been served, or declaration filed, ten days before the term of the court; but all the causes shall be tried or otherwise disposed of in the order they are placed on the docket, unless the court, for good and sufficient cause shall otherwise direct. And whenever either party shall apply for the continuance of a cause on account of the absence of testimony, the motion shall be grounded on the affidavit of the party so applying, or his, her or their authorized agent, showing that due diligence has been used to obtain such testimony, or the want of time to obtain it; and also the name and residence of the witness or witnesses, and what particular fact or facts the party expects to prove by such witness or witnesses; and should the court be satisfied that such evidence would not be material on the trial of the cause, or if the opposite party will admit the fact or facts stated in the affidavit, the cause shall not be continued.

SEC. 14. The defendant may plead as many matters of fact in several pleas as he may deem necessary for his defence, or may plead the general issue, and give notice in writing under the same, of the special matters intended to be relied on for a defence on the trial; under which notice, if adjudged by the court to be sufficiently clear and explicit, the defendant shall be permitted to give evidence of the facts therein stated, as if the same had been specially pleaded and issue taken thereon: and whenever it shall become necessary for the attainment of justice, to allow a plaintiff to reply several matters to the plea of a defendant, or to allow a defendant to rejoin several matters to the replication of a plaintiff, the court in which the action shall be pending, on the special application of the party desiring so to reply or rejoin, may allow the same to be done. But no person shall be permitted to deny on trial, the execution of any instrument in writing, whether sealed or not, upon which any action may have been brought, or which shall be pleaded or set up by way of defence or set off, unless the person so denying the same shall, if defendant, verify his plea by affidavit; and if plaintiff, shall file his or her affidavit denying the execution of such instrument: *Provided*, If the party making such denial be prosecuting or sued as executor or administrator, it shall be sufficient to state in such affidavit, the belief of the party making the same, according to his or her best knowledge, that such instrument was not executed by the testator or intestate.

SEC. 15. In all cases where interlocutory judgment shall be given in any action brought upon a penal bond, or upon any instrument of writing for the payment of money only, and the damages rest in computation, the court may refer it to the clerk to assess and report the damages, and may enter final judgment therefor, without a writ of inquiry, and without impanneling a jury for that purpose; and in all other actions, when judgment shall go by default, the plaintiff may have his damages assessed by the jury in court.

SEC. 16. The court may, in its discretion, before final judgment, set aside any default, upon good and sufficient cause, upon affidavit, upon such terms and conditions as shall be deemed reasonable.

SEC. 17. All affidavits read in court during the progress of any cause and relating thereto, shall be filed and preserved by the clerk.

SEC. 18. In actions brought on penal bonds, conditioned for the performance of covenants, the plaintiff may assign in his declaration as many breaches as he may think fit, and the jury, whether on trial of the issue or of inquiry, shall assess the damages for so many breaches as the plaintiff shall prove, and the judgment for the penalty shall stand as a security for such other breaches as may afterwards happen, and the plaintiff may, at any time afterwards, sue out a writ of inquiry, to assess damages for the breach of any covenant or covenants contained in such bond, subsequent to the former trial or inquiry; and whenever execution shall be issued on such judgment, the clerk shall indorse thereon the amount of the damages assessed by the jury, with the costs of suit, and the sheriff or coroner shall only collect the amount so indorsed: *Provided*, That in all cases where a writ of inquiry of damages shall be issued for any such breaches subsequent to the first trial or inquiry, the defendant, or his agent or attorney, shall have at least ten days' notice, in writing, of the time of executing the same.

SEC. 19. The defendant or defendants in any action brought upon any contract or agreement, either express or implied, having claims or demands against the plaintiff or plaintiffs in such action, may plead the same, or give notice thereof under the general issue, as is provided in the fourteenth section of this chapter, or under the plea of payment; and the same, or such part thereof as the defendant or defendants shall prove on trial, shall be set off and allowed against the plaintiff's demand, and a verdict shall be given for the balance due; and if it shall appear that the plaintiff be indebted to the defendant, the jury shall find a verdict for the defendant or defendants, and certify to the court the amount so found; and the court shall give judgment in favor of such defendant or defendants, for the amount so certified, with the costs of his defence, and execution shall be issued on such judgment as in other cases.

SEC. 20. In all civil actions, each party shall be entitled to a challenge of three jurors, without showing cause for such challenge; and when the jury retire to consider of their verdict, they shall be permitted to take any papers that may have been used as evidence on the trial.

SEC. 21. If, during the progress of any trial in any civil cause, either party shall allege an exception to the opinion of the court, and reduce the same to writing, it shall be the duty of the judge to allow the said exception, and to sign and seal the same; and the said exception shall thereupon become a part of the record of such cause.

SEC. 22. Exceptions taken to opinions and decisions of the circuit courts upon the trial of causes, in which the parties agree that both matters of law and fact may be tried by the court, and in appeal cases, tried by the court without the intervention of a jury, shall be deemed and held to have been properly taken and allowed, and the party excepting, may assign for error before the supreme court, any decision or opinion so excepted to, whether such exception relates to receiving improper or rejecting proper testimony, or to the final judgment of the court upon the law and evidence.

SEC. 23. Exceptions taken to opinions or decisions of the circuit courts, overruling motions in arrest of judgment, motions for new trials and for continuances of causes, shall be allowed; and the party excepting may assign for error any opinion so excepted to.

SEC. 24. It shall be sufficient for the jury to pronounce their verdict, by their foreman, in open court, without reducing the same to writing, and the clerk shall enter the same in form, under the direction of the court; and if either party may wish to except to the verdict, or for other causes, to move for a new trial or in arrest of judgment, he shall, before final judgment be entered, give, by himself or counsel, to the opposite party or his counsel, the points in writing, particularly specifying the grounds of such motion, and shall also furnish the judge with a copy of the same, and final judgment shall thereupon be stayed until such motion can be heard by the court. But no more than two new trials shall be granted to the same party in the same cause; nor shall any verdict or judgment be set aside for irregularity only, unless cause be shown for the same, during the sitting of the court at the term such judgment or verdict shall be given.

SEC. 25. Whenever an entire verdict shall be given on several counts, the same shall not be set aside or reversed, if any one or more of the counts be good. But if one or more counts be faulty, the defendant may apply to the court to instruct the jury to disregard such faulty counts.

SEC. 26. In cases of attachment against absent or absconding debtors, the attaching creditor or creditors shall, on the return of the attachment, or at the term of the court where the same is made returnable, file a declaration, with a copy of the instrument or account on which the attachment was issued, as in other cases; after which the cause shall proceed as in other cases; and if no declaration shall be filed, the defendant, on entering his appearance, shall have a judgment against the attaching creditor for costs.

SEC. 27. Any person, for a debt *bona fide* due, may confess judgment by himself or attorney duly authorized, without process, and every confession of judgment whether with or without process, shall operate as a release of all errors in the entering up of the judgment or making record thereof.

SEC. 28. The circuit courts in charging the jury shall only instruct as to the law of the case.

SEC. 29. Every person desirous of suffering a nonsuit on trial, shall be barred therefrom unless he do so before the jury retire from the bar.

SEC. 30. Papers read in evidence, though not under seal, may be carried from the bar by the jury.

SEC. 31. Interpreters may be sworn truly to interpret when necessary.

SEC. 32. When judgment shall be arrested for any defect in the record of proceedings after the first process, the plaintiff shall not be compelled to commence his action anew; but the court shall order new pleadings to commence with the error that caused the arrest.

SEC. 33. Any person holding a bond or note for the direct payment of property or money, desiring to put the same in suit, may elect to do so, by filing it with the clerk of any circuit court having jurisdiction thereof, together with a petition purporting as follows: "F. Circuit, Set.; A. B., plaintiff, states that he holds a bond or note (as the case may be) on the defendant C. B., in substance as followeth: (here insert a copy of the bond or note,) yet the said debt remains unpaid; wherefore he prays judgment for his debt and damages for the detention of the same, together with his costs."

SEC. 34. If the plaintiff shall hold the bond or note as indorsee, then after reciting the bond or note, say "on which is the following assignments, (recite the

assignments,) whereby the plaintiff hath become the proprietor thereof, of which the defendant hath had due notice.”

SEC. 35. A copy of the petition shall be sent out, with a summons annexed thereto, requiring the defendant or defendants to appear and answer the said demand, which shall be executed by the sheriff, by delivering a copy of the petition and summons to the defendant, and each of them, if there be more than one.

SEC. 36. The said petition shall stand in the place of a declaration: the defendant or defendants may appear and plead, and then an issue may be joined as in actions of debt on such bond or note; but if the defendant or defendants shall not appear and plead, the plaintiff may take judgment by default, and final judgment as in other cases.

SEC. 37. When a petition shall have been filed according to the provisions of sections thirty-three and thirty-four of this chapter, and an affidavit to hold to bail, as herein provided, there shall be issued by the clerk (if he shall be satisfied there is good cause) a *capias* and an order to hold to bail, as is now provided by law. In such cases the affidavit shall be as near as may be in the following form, to-wit:

“State of Illinois, }
County, } ss.

A. B., plaintiff in the above petition, maketh oath and saith that he hath a real subsisting and unsatisfied cause of action against C. D., the defendant, which is the same cause of action set out in the above petition, and amounts to the sum of

; and further, that the plaintiff will be in danger of losing his debt, unless the defendant be held to bail.

Signed, A. B.

Sworn to, and subscribed before me, at my office, this day of
E. F., Clerk.”

Which affidavit may be made before the clerk of the proper county, or before any justice of the peace in this State.

SEC. 38. In all cases when a tender shall be made and full payment be offered, by discount or otherwise, in specie, as the party by contract or agreement ought to do, and the party to whom such tender shall be made doth refuse the same, and yet afterwards will sue for the debt or goods so tendered, the plaintiff shall not recover any costs in such suit.

SEC. 39. It shall not be necessary to file a declaration in any *scire facias* to revive a judgment, or foreclose a mortgage, in any court of record in this State.

SEC. 40. The clerks of the several circuit courts shall keep a fee book, in which shall be clearly and distinctly set down, in items under the proper title, the costs of each suit, including the sheriff's and witnesses', as well as the clerk's fees, noting distinctly what fees have accrued on the part of each party; which fee book shall be a public record; and whenever any suit shall be determined, and final judgment entered, the costs and charges of each party litigant shall be made up, and the costs of the prevailing party shall be included in the judgment; and the clerk shall always send out a bill of such costs with the execution; and the costs of the party failing in the suit shall be collected by fee bill, in the manner prescribed by law.

SEC. 41. If any clerk shall issue a fee bill or a bill of costs with the execution, without first entering the same in his fee book, or if any such bill of costs or fee bill shall be so issued which shall not be in substance a copy of the recorded bill, the same shall be void: and any person having paid such bill of costs or fee bill may recover from the clerk the amount thereof, with costs of suit, in any court having cognizance thereof: and in every bill of costs to be made and recorded as

aforesaid, the names of the witnesses shall be stated, with the number of days each attended at every term.

SEC. 42. It shall not be necessary to insert in the judgment other than the docket book, the costs of the prevailing party, except in cases where a complete record shall be required; but the fee book of the clerk shall be taken and deemed a part of the record; subject, however, at all times, to be corrected by the court.

SEC. 43. The clerks of the several circuit courts shall provide and keep in their respective offices, well bound books for entering therein an alphabetical docket of all judgments and decrees rendered in their respective courts; and it shall be the duty of said clerks, during every term, or within thirty days thereafter, to enter in such docket all final judgments and decrees rendered at such term, in alphabetical order, by the name of the person against whom the judgment or decree was entered, which shall contain in columns, ruled for that purpose, the names of the parties, the date, the nature of the judgment or decree, the amount of the debt, damages and costs, the book and page in which it is entered, and leaving a blank column or columns for entering a note or memorandum of the satisfaction or other disposition thereof: and when any judgment or decree shall be satisfied by execution or otherwise, or shall be set aside, the said clerk shall enter a memorandum thereof in the column left for that purpose, showing how disposed of, and the date, book and page where the evidence thereof is recorded; and such dockets may be searched by persons at all reasonable times without fee: and every clerk who shall fail to keep such docket or to enter therein any judgment or decree as aforesaid, shall forfeit and pay a sum, not exceeding one hundred dollars, nor less than twenty-five dollars, and costs of suit: the one-half to the use of the county where such court is held, and the other half to the use of any person who will sue for the same; to be recovered by action of debt in the circuit court.

SEC. 44. Whenever any sheriff or coroner shall neglect or refuse to make return of any execution to him directed and delivered, where the same shall be made returnable, or shall refuse or neglect to pay over any moneys collected on such execution, the party suing out such execution, on giving to said sheriff or coroner ten days' notice in writing, of his, her or their intention, may apply to the next circuit court for relief; and it shall be the duty of such court, on proof, by affidavit of the delivery of such execution, if the same be not returned, or on proof that such money has been collected and not paid over, to grant an order against such sheriff or coroner, requiring him to make immediate return of such execution; or if the amount or any part thereof has been collected, to pay over the same immediately with twenty per cent. thereon from the time of collection till paid; and on failure of such sheriff or coroner to comply with such order on demand, and being served with a copy of the order, he shall be judged to be in contempt, and punished accordingly; or the plaintiff in such execution may have judgment for the money with twenty per cent. thereon so collected, and have execution as in other cases.

SEC. 45. The clerk shall enter in a book, to be kept by him for the purpose, the return of the sheriff or coroner of all executions, within thirty days after the same shall be returned under the penalty imposed by the forty-third section of this chapter.

SEC. 46. A party out of term intending to move to set aside or quash any execution, replevin bond or other proceedings, may apply to the judge at his chamber for a certificate, (and which the said judge may in his discretion grant,) certifying

that there is probable cause for staying further proceedings until the order of the court on the motion; and a service of a copy of the certificate at the time of or after the service of the notice of the motion, shall thenceforth stay all further proceedings accordingly.

SEC. 47. Appeals from the circuit courts to the supreme court shall be allowed in all cases where the judgment or decree appealed from be final, and shall amount, exclusive of costs, to the sum of twenty dollars, or relate to a franchise or freehold: *Provided*, Such appeals be prayed for at the time of rendering the judgment or decree, and provided the party praying for such appeal shall, by himself or agent or attorney, give bond with sufficient security, to be approved by the circuit court, and filed in the office of the clerk of the circuit court within the time limited by the court; which bond shall be in a reasonable sum, sufficient to cover the amount of the judgment appealed from and all costs, and conditioned for the payment of the judgments, costs, interest and damages, in case the judgment shall be affirmed, and also for the due prosecution of said appeal; and the obligee in such bond may, at any time, on a breach of the conditions thereof, have and maintain an action at law as on other bonds.

SEC. 48. The appellant shall lodge in the office of the clerk of the supreme court, an authenticated copy of the record of the judgment or decree appealed from, by or before the third day of the next succeeding term of said supreme court, provided that if there be not thirty days between the time of making the appeal and the sitting of the supreme court, then the record shall be lodged as aforesaid, at or before the third day of the next succeeding term of said supreme court, otherwise the said appeal shall be dismissed, unless further time to file the same shall have been granted by the supreme court upon good cause shown.

SEC. 49. In all cases of appeal and writs of error, the supreme court may give final judgment and issue execution, or remand the cause to the circuit court, in order that an execution may be there issued, or that other proceedings may be had thereon.

SEC. 50. When an appeal or writ of error shall be prosecuted from the judgment of any circuit court of this State, to the supreme court, and said appeal or writ of error shall be dismissed or the judgment of the circuit court affirmed, it shall be the duty of the clerk of the circuit court from which said appeal or writ of error was prosecuted, upon a copy of the order of the supreme court dismissing said appeal or writ of error, or affirming said judgments being filed in his office, to issue execution upon said judgment, and to proceed thereon in all respects, as though no appeal or writ of error had been prosecuted from said judgment.

SEC. 51. In all cases where a judgment or decree shall be rendered in any circuit court, in any case whatever, either in law or in chancery, against two or more persons, either one of said persons shall be permitted to remove said suit to the supreme court by appeal or writ of error, and for that purpose shall be permitted to use the names of all of said persons, if necessary; but no costs shall be taxed against any person who shall not join in said appeal or writ of error. And all such cases shall be determined in said supreme court as other suits are, and in the same manner that it would have been, if all the parties had joined in said appeal or writ of error.

SEC. 52. The supreme court, in case of a partial reversal, shall give such judgment or decree as the inferior court ought to have given; or remand the cause to the inferior court for further proceedings, as the case may require.

SEC. 53. A writ of error shall not be brought after the expiration of five years from the passing of the judgment complained of; but when a person thinking himself aggrieved by any decree or judgment that may be reversed in the supreme court, shall be an infant, *feme covert*, *non compos mentis*, or imprisoned when the same was passed, the time of such disability shall be excluded from the computation of the said five years.

SEC. 54. No writ of error shall operate as a supersedeas, unless the supreme court, or some justice thereof in vacation, after inspecting a copy of the record, shall order the same to be made a supersedeas, nor until the party procuring such writ shall file a bond in the manner and with the condition required in cases of appeals; when the clerk issuing such writ shall indorse thereon that it shall be a supersedeas and operate accordingly: and the parties in writs of error shall be subject to the same judgment and mode of execution, as is provided in cases of appeals.

SEC. 55. Whenever the supreme court shall be equally divided in opinion on hearing an appeal or writ of error, the judgment of the court below shall stand affirmed.

SEC. 56. Any instrument of writing, to which the maker shall affix a scrawl by way of seal, shall be of the same effect and obligation, to all intents, as if the same were sealed.

SEC. 57. In all cases of appeals to the supreme court, where the appellant shall fail to prosecute the appeal, the supreme court shall, upon dismissing the appeal, enter judgment against the appellant, for not less than five, nor more than ten per cent. upon the amount of the judgment, for damages, in consequence of the delay occasioned by such appeal.

SEC. 58. In cases of appeals to the circuit courts from judgments of justices of the peace, the appellee shall be entitled to judgment, not exceeding ten per cent. damages upon the amount of the judgment, if the appeal is dismissed for want of prosecution, or if the court shall be satisfied that the appeal was prosecuted for purposes of delay.

SEC. 59. In actions upon bonds, notes and all other writings made assignable by law, in the name of the assignee, the plaintiff shall not be held bound to prove the assignments or the signature of any assignor unless the fact of assignment be put in issue by plea, verified by the affidavit of the defendant or some credible person, stating that he verily believes the facts stated in the plea are true.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Acts Nos. 6 and 20.]

CHAPTER LXXXIV.

PRINTING AND BINDING.

SECTION

1. Public printer to give bond; its requirements.
2. Public work to be given to public printer.
3. Journals of General Assembly, how kept; printer to be furnished with copies of, every morning; originals, how disposed of.
4. Secretary of State to give printer copies of laws and resolutions in ten days after adjournment.
5. Secretary to superintend publication.
6. Laws, how arranged in volume; index, &c.
7. Marginal notes, &c.
8. Forty days allowed printer to complete printing.
9. Two thousand copies of laws, one thousand each of Senate and House journals and reports to be published.
10. Prices for printing.
11. Who shall examine printer's accounts.
12. Printer's accounts, when settled; paper account to be settled.

SECTION

13. Secretary to purchase paper.
14. Paper, how contracted for.
15. Proposals to be filed.
16. Bond to be given by contractor for paper.
17. Paper, how paid for.
18. Printer to report to General Assembly.
19. Messages, &c., how printed.
20. Binding, how contracted for, and prices.
21. Secretary to contract for less prices, if possible.
22. Binder to give bond.
23. When printer shall deliver work to the binder; when binder shall deliver to the secretary of State.
24. Printing and binding, how paid for; distribution of laws, &c.
25. Penalty, if printer or binder fail to perform their duties according to law.

SECTION 1. The public printer shall give bond to the Governor, with good security, previous to entering upon the discharge of the duties of his office, in the penalty of ten thousand dollars, conditioned that he will faithfully perform and execute all the public printing required to be done in pursuance of law, by the direction of either branch of the General Assembly, or any officer of the State, and that he will do and perform all other acts and things required, or which may hereafter be required of him according to law, which said bond shall be approved by the Governor and filed in the office of the secretary of State.

SEC. 2. All laws, journals, bills, messages, blanks, certificates, circulars or advertisements of any description, which shall be ordered to be printed by the legislature of the State of Illinois, or by either branch thereof, or by the Governor, or by either of the heads of departments, in pursuance of law and the discharge of their official duties, shall be given to the public printer or printers, who may, from time to time be elected under the constitution of this State, unless otherwise provided by law.

SEC. 3. The journal of each house of the General Assembly, shall hereafter be kept in well bound books. The secretary of the senate, and clerk of the house of representatives, shall furnish to the public printer, every morning during each session of the General Assembly, a copy of the journal kept by them respectively, of the day preceding the last day's journal; and the said secretary and clerk shall, within ten days after the adjournment of each session of the General Assembly, deposit the original journals kept by them as aforesaid, with the secretary of State.

SEC. 4. The secretary of State is authorized and required to cause to be made out true and accurate copies of all laws, acts and resolutions of the General Assembly, which may be required to be printed; and such copies so made out, he shall deliver to the person or persons authorized to print the same, within ten days after the adjournment of each session of the General Assembly.

SEC. 5. And the secretary of State shall likewise superintend the printing of such laws, acts and resolutions, carefully comparing the printed copies with the original laws and rolls deposited in his office, correcting all errors that may appear in such printed copies ; and shall make and cause to be printed at the end of such printed copy, his certificate that the acts and resolutions so printed are exact copies of the rolls in his office.

SEC. 6. Such laws shall be arranged in alphabetical order, according to their subject matter ; and prefixed to each volume, there shall be a table of contents, and at the end thereof, a full and complete index. .

SEC. 7. Each edition of the laws, required to be published, shall be comprised in one octavo volume, with marginal notes, and the day on which each act takes effect shall be stated in the margin opposite the table, and the day on which the same was approved by the council of revision, or when it became a law, in any of the modes prescribed in the constitution, shall be stated at the end of the act, omitting the name and style of the Governor, and of the speakers of the two houses of the General Assembly.

SEC. 8. The public printer or printers shall be allowed forty days from the adjournment of the legislature to complete the printing of the laws, journals and reports of each session of the legislature.

SEC. 9. There shall be published at the close of each session of the legislature, two thousand copies of the laws, passed at such session ; one thousand copies of the journals of the senate ; one thousand copies of the journals of the house of representatives ; and one thousand copies of the reports of the two houses.

SEC. 10. The prices for public printing shall be as follows, to-wit : For plain work, fifty-six and one-fourth cents per thousand ems ; for figure work, eighty-four cents per thousand ems ; and for rule and figure work, one dollar and twelve and a half cents per thousand ems, for composition ; and fifty-six and one-fourth cents per token for press work ; for blanks, certificates and circulars for the use of the legislature, and the several departments of the State government, one dollar for the first quire, and for each additional quire of the same kind ordered at the same time, seventy-five cents ; excepting when said blanks contain so much rule and figure work as would demand an additional charge from journeymen for composition ; in which case the public printer may make an advance of fifty per cent. on the charge of his journeymen as aforesaid : the paper for such blanks, certificates and circulars to be furnished by the public printer at his own proper cost and charge : and if said blanks, certificates or circulars, be badly or inaccurately printed, or be printed on paper of an inferior quality, the officer ordering the same may refuse to receive the same : for advertising, the public printer or printers shall receive for every one hundred words, fifty cents for the first insertion, and twenty-five cents for every subsequent insertion that may be ordered by the officer of government that directs the same to be published ; and all other editors of papers who may publish such advertisement by direction of the proper officer, shall receive for their services the same as the public printer or printers for the same services.

SEC. 11. It shall be the duty of the auditor, treasurer and secretary of State to examine all accounts rendered by the public printer or printers, for work performed or materials furnished for the State, which officers shall call to their aid practical printers whenever they shall not be satisfied that the charges have been correctly made.

SEC. 12. Immediately after the printing of any session of the General Assembly shall have been completed, it shall be the duty of the auditor, treasurer and secretary of State, to settle the accounts of the public printer according to the preceding section, and to ascertain the quantity of paper which has been properly used by the public printer in the printing for said session, according to the provisions of the preceding section.

SEC. 13. Thereupon the secretary of State shall cause an advertisement to be published three times in the newspaper published by the public printer, and in some newspaper published at each of the following places, to-wit: St. Louis, Louisville, Pittsburgh, Philadelphia, New York and Boston; the third insertion of such advertisement to be at least one month previous to the time appointed for receiving proposals; said advertisement shall specify the quantity, size and quality of paper which will be required for the public printing, the time and place of delivering the same, and the time when, and the place where, sealed proposals will be received for furnishing the same. The quantity of paper to be furnished, shall be ascertained by adding one-fourth to the quantity used for the printing of the preceding session of the legislature, and deducting from the whole amount the quantity of surplus paper remaining in the hands of the public printer for the time being.

SEC. 14. At the close of the period for said advertisement, the secretary of State shall, in the presence of the auditor and treasurer, open all the proposals he may have received, and thereupon shall accept the proposal of the lowest responsible bidder, and immediately notify such bidder of such acceptance.

SEC. 15. The secretary of State shall file such proposal in his office.

SEC. 16. The person receiving the contract for furnishing the paper for the use of the State, shall, at the time of the execution of such contract, give bond to the Governor, in the penalty of ten thousand dollars, conditioned that he will faithfully furnish and deliver the said paper in kind, quality and quantity, at the times, places, and upon the terms mentioned in said contract; and that he will, in all respects, comply faithfully with the provisions of such contract, and of the law by virtue of which such contract shall have been made, which said bond shall be approved by the secretary of State, auditor and treasurer, and filed in the office of the secretary of State.

SEC. 17. Upon the delivering of the paper in pursuance of, and according to such contract, the auditor with the concurrence of the secretary of State and treasurer, shall draw his warrant in favor of such contractor for such sum of money as he shall be entitled to therefor.

SEC. 18. The public printer shall, within the first week of each session, report to the legislature the amount of work done by him, the nature of said work, the amount of money received therefor; and the amount and quality of paper used by him as public printer since the commencement of the preceding session of the General Assembly.

SEC. 19. In printing messages, reports and other documents ordered by either branch of the General Assembly, or in pursuance of any law or resolution of the legislature, the State printer may place a title at the top of the first page of every such document, but shall dispense with a title page, and with all unnecessary blank pages: *Provided*, That a title page shall be prefixed to the volume of reports, and to the journals of the General Assembly.

SEC. 20. It shall be the duty of the secretary of State, after having given six weeks' notice, to be published in one of the newspapers printed at the city of

Springfield, and one at the city of Chicago, of the time of letting the folding, stitching and binding, to contract with some responsible book binder or binders, who reside in this State, before the commencement of each regular or special session of the General Assembly of this State, to do the folding, stitching and binding of the approaching session, consisting of reports, journals and laws, in the following manner and at no greater prices than those annexed, to-wit: For folding, stitching and covering with blue paper, and cutting the edges of the journals, three and one-half cents for each one hundred pages in the volume; for folding and stitching reports, two cents for each one hundred pages in the volume; for binding laws and journals and reports for secretary's office, with leather backs and paper sides, when the number of pages do not exceed one hundred and fifty, twelve and one-half cents for each one hundred pages; when the volume of laws contains over one hundred and fifty pages, the price shall be ten cents for each one hundred pages of the volume.

SEC. 21. The secretary of State is hereby required and authorized to contract for the binding in the preceding section specified, at less prices therein named, if in his power so to do.

SEC. 22. It shall be the duty of the public binder or binders, to give bond with sufficient security, to be approved by the Governor, in the penal sum of ten thousand dollars for the faithful performance of his or their contract, agreeable to law.

SEC. 23. It shall be the duty of the public printer or printers to deliver to the public binder or binders, each form of the laws and journals, dry and in good order as fast as they are printed: and after the last form of the laws is so printed and delivered, the said binder or binders shall bind and deliver to the secretary of State one thousand copies of the laws, in fifteen days, and at the rate of one thousand copies every twelve days afterwards, (Sundays excepted.) Also, after the last form of the journals are delivered to said binder or binders, they shall do them up as above specified, and deliver at the rate of one thousand copies every ten days, (Sundays excepted.)

SEC. 24. On the fulfilment of any contract for binding, folding, stitching or distributing the laws of this State, the secretary of State shall certify the fact to the auditor of public accounts, who shall issue his warrant on the treasurer for the sum due such person for such binding, folding, stitching or distributing.

SEC. 25. If the public printer shall fail to print the laws and journals within the time limited by law, or if the binder shall fail to have the laws and journals bound within the time limited, it shall be the duty of the secretary of State, to state in the certificate which he is required to give to such printer, the time at which such laws and journals shall have been printed, and the time at which the binding should have been completed, and the time at which the said printing was completed; and the auditor shall thereupon deduct from the price of such printing, if the failure be in the printing, or if the failure be in the binding, deduct from the price of such binding, six per cent. per week, on the price of the printing or binding, as the case may be, and issue his warrant on the treasury for the sum due such printer or binder, after making the deductions aforesaid.

APPROVED: March 3, 1845.

CHAPTER LXXXV.

PROBATE COURT.

SECTION

1. Probate court established in each county, consisting of one officer.
2. Probate justices, to be elected in same manner as justices of the peace.
3. How elected; to be sworn; to keep offices at county seats.
4. Powers and jurisdiction as justices of the peace; appeals, *certiorari*, &c.
5. Jurisdiction when executors, &c., are parties, to extend to one thousand dollars.
6. Additional powers, as courts of probate, particularly defined.
7. How proceedings made matters of record, and used as evidence.
8. Probate court to sit once in each month; to have seal; process; record to be kept; books, &c., how paid for.
9. Matters of law and fact, how determined; appeals, &c.
10. Proceedings of probate court to be reported to

SECTION

- next circuit court; when to become matters of record.
11. Private seal, when may be used.
12. Administrators and executors may be sued on their bonds, in probate court.
13. Books, records, &c., how to be kept; entries, &c., to be made.
14. Power of probate to enforce process; duty of officer serving same, and his fees.
15. Account and record books.
16. Process, &c., to be issued in the name of the people tested, sealed, &c.
17. Power as to proof and administration of wills, &c.
18. If office become vacant, how filled.
19. Fees of probate justice.
20. Appeals allowed from acts of probate justice, ministerial as well as judicial.
21. Jury trial secured to parties.

SECTION 1. There shall be and remain, as now established, in each county of this State, a court of probate, to be composed of one officer, to be styled a probate justice of the peace.

SEC. 2. Such probate justices of the peace, shall be elected at the general elections to be held in their respective counties, as provided by law, in the same manner as provided for the election of other justices of the peace, and shall hold their offices for the term of two years, and until their successors shall be elected and qualified.

SEC. 3. The election of such probate justices of the peace shall, in all respects, be conducted and returns thereof made, in the manner provided or to be provided by law in the case of the election of justices of the peace. The said probate justices of the peace so to be elected under the provisions of this chapter, shall hold and keep their offices at the county seats of their respective counties, and shall take the same oath, in the same manner, and give like bond and security as are required of other justices of the peace.

SEC. 4. Said probate justices of the peace are hereby vested with the same powers and jurisdiction in civil cases which are or shall be conferred by law upon other justices of the peace, and in the exercise of said powers and jurisdiction, the rules of law which are or shall be applicable to ordinary justices of the peace, shall be applicable to the probate justices of the peace hereby created, and to all proceedings before them, growing out of such power and jurisdiction; and appeals may be taken from, and writs of *certiorari* prosecuted upon their judgments rendered under the power conferred in this section in the manner provided in case of similar judgments rendered by justices of the peace.

SEC. 5. The said justices of the peace hereby created, shall also have jurisdiction of all cases of debt and *assumpsit*, express or implied, where executors or administrators shall be parties, plaintiff or defendant, and when the amount on either side claimed to be due shall not exceed one thousand dollars.

SEC. 6. In addition to the judicial powers conferred in the preceding sections, the said probate justices of the peace shall have, possess, and exercise within their respective counties, the following ministerial powers, to-wit:

1st. Power to administer all oaths or affirmations concerning any matter or thing before them :

2d. To issue and grant letters of administration, letters testamentary and letters of guardianship, and repeal the same :

3d. To take probate of wills, and record the same :

4th. To determine the person or persons entitled to letters of administration, or to letters testamentary, and in general, to do and perform all things concerning the granting of letters testamentary, or of administration, or of guardianship, which the judge of probate may do by the existing laws :

5th. To receive, file and record inventories, appraisement bills and sale bills, as is required by the existing laws :

6th. To require executors, administrators and guardians, to exhibit and settle their accounts, and to settle for the estates and property in their hands, and for that purpose they may issue citations and attachments into every county in this State, to be executed by the sheriffs of the said counties :

7th. To do and perform all other acts of a ministerial character which the judges of probate are now authorized to perform in their respective counties :

8th. To take and certify acknowledgments and proofs of deeds and other instruments ; to take affidavits and depositions ; and to administer oaths, to the same extent and with like effect, as other justices of the peace.

SEC. 7. If it should become necessary to use copies of the proceedings had before such probate justices of the peace under the ministerial powers aforesaid, or any of them in any other State or territory, the parties interested therein may procure a transcript thereof, and, on motion, the same may be filed in the clerk's office of the circuit court, and shall be considered a matter of record in said court, and copies thereof may be certified as other records of said court are or may be.

SEC. 8. The said courts shall sit in their respective counties throughout this State, on the first Monday in every month, and at such other times as extraordinary circumstances may require, and continue open until all the business pending before them shall be disposed of. The said courts shall each have a seal, and may issue all process necessary under the hand and seal of the probate justice, and all such process shall bear date when issued: the said probate justice shall record all his proceedings at length, in a book or books, by him for that purpose furnished : for all necessary books so furnished, the respective county commissioners' courts shall allow the said probate justice, a reasonable compensation, to be paid out of the county treasury.

SEC. 9. All matters of law and of fact shall be determined by said court, when properly before it ; and in all cases, an appeal or writ of *certiorari* shall lie to the circuit court of the county, to be prosecuted in the same manner as appeals and writs of *certiorari* are prosecuted from the decisions of other justices of the peace.

SEC. 10. The said probate justices of the peace are hereby vested with all the judicial powers usually exercised by former judges of probate, but in all cases of

the exercise of such judicial powers, they shall report their proceedings therein to the next term of the circuit court of their respective counties on the first day thereof, for approval or rejection of such circuit court; and if such proceedings shall be approved by the circuit court, the same shall be considered as a matter of record in said court.

SEC. 11. Letters of administration, letters testamentary, and all process, certificates and all other papers, made or issued by probate justices of the peace, to which the private seal of such justice is or may be affixed, because of their being no public seal, shall be as valid, to all intents and purposes, as though a public seal had been used.

SEC. 12. Administrators and executors, and their sureties may be sued on their bonds in the probate court, subject to the limitation contained in section five of this chapter, and the proofs and proceedings shall be as in ordinary cases.

SEC. 13. The probate justices of the peace shall make, keep and preserve complete records of all wills, testaments and codicils, and the probate thereof, all letters testamentary and of administration, and all bonds taken of executors or administrators, and shall file and preserve the originals of the aforesaid papers, and all inventories, appraisements, sale bills and other exhibits, presented to and received by said courts, appertaining to the administration and settlement of estates: and shall enter on their order books the amount of all such inventories, appraisements, sale bills and other exhibits, under a proper heading for easy reference: and shall enter upon their books of record all matters, controversies and suits, that shall arise for decision or adjudication before them, with the names of the parties, and the judgment or opinion of the court, in order that there may be no difficulty in taking appeals.

SEC. 14. The probate justices of the peace shall have power to issue all process necessary to enforce the judgments and decrees of said court, which process shall be directed to the sheriff or to any constable of the county. And any sheriff or constable, to whom such process shall be directed, is hereby authorized and required to execute the same, and they shall be entitled to the same fees as are allowed for serving like process issued by a justice of the peace.

SEC. 15. The probate justices of the peace shall provide well bound books, and enter therein the accounts of executors and administrators, so as to make the same complete records of all accounts allowed, and all settlements of estates made in said courts.

SEC. 16. All letters testamentary, letters of administration, either with or without the will annexed, letters of administration to collect, and *de bonis non*; writs, summonses, citations, subpoenas, and all other processes which may at any time be made or issued by the justice of probate, in the discharge of his official duties shall be made and issued in the name of the people of the State of Illinois, bear teste in the name of such probate justice, and be sealed with the seal of the said court of probate.

SEC. 17. The probate justices in each county in this State shall have jurisdiction and authority to hear and determine all causes, matters and controversies testamentary, which shall be brought before them, touching the proof of wills, testaments and codicils, and may grant probate thereof; and shall hear and determine the right of administration of estates of persons dying intestate; and to do all other things touching the granting of letters testamentary, and of administration, and the settlement of estates.

SEC. 18. When any probate justice of the peace shall die, resign, refuse to qualify, or be removed from office, or the office shall in any way become vacant, such office may be filled by a special election to be called and held in the same manner as in the case of justices of the peace. And if any probate justice of the peace shall refuse to qualify and give bond, in manner and within the time specified in case of other justices of the peace, the office shall in like manner be deemed vacant.

SEC. 19. The probate justices of the peace, when acting as ordinary justices of the peace, shall be entitled to the fees allowed by law to justices of the peace for similar services, and when acting under the powers usually exercised by judges of probate, they shall be allowed such fees as shall be from time to time allowed by law.

SEC. 20. Appeals may be taken from all judgments, decrees and decisions rendered by probate justices of the peace, while acting in the capacity of judges of probate, whether such acts be performed in their judicial or ministerial character; such appeals to be taken and prosecuted in the same manner, and with like effect as appeals from the judgments and decisions of other justices of the peace.

SEC. 21. Parties litigant, in suits before such probate justices of the peace, whether acting as courts of probate or justices of the peace, shall be entitled to trial by jury, as is provided in suits before other justices of the peace.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Acts Nos. 21 and 22.]

CHAPTER LXXXVI.

QUO WARRANTO.

SECTION

1. Persons usurping office, franchise, &c., to be proceeded against by *quo warranto*; rights of several may be tried in one information; proceedings to be had of same term at which information is filed.

SECTION

2. Party found guilty to be ousted, fined and mulcted in costs.
3. Court may allow time for pleading, &c.
4. Appeals to be allowed, on terms; writ of error, &c., to operate as a stay of proceedings.

SECTION 1. In case any person or persons shall usurp, intrude into, or unlawfully hold or execute, any office or franchise, it shall and may be lawful for the attorney general, or the circuit attorney of the proper circuit, with the leave of any circuit court, to exhibit to such court, one or more information or informations, in the nature of a *quo warranto*, at the relation of any person or persons desiring to sue or prosecute the same, who shall be mentioned in such information or informations, as the relator or relators against such person or persons so usurping, intruding into, or unlawfully holding or executing any such office or franchise, and to proceed therein, in such manner as is usual in cases of informations in the nature of *quo warranto*. If it shall appear to said court that the several rights of divers persons to the same office or franchise, may properly be determined on one informa-

tion, it shall and may be lawful for the said court to give leave to exhibit one such information against several persons, in order to try their respective rights to such office or franchise; and such person or persons against whom such information or informations in the nature of a *quo warranto* shall be sued or prosecuted, shall appear and plead, as of the same term in which the said information or informations shall be filed, unless the court shall give further time to such person or persons against whom such information or informations shall be exhibited, to plead; such person or persons, who shall sue or prosecute such information or informations, shall proceed thereupon with the most convenient speed that may be.

SEC. 2. In case any person or persons against whom any such information in the nature of a *quo warranto*, shall, in any of the said cases, be exhibited as aforesaid, shall be found or adjudged guilty of any usurpation or intrusion into, or unlawfully holding and executing any office or franchise as aforesaid, it shall and may be lawful for the said courts, as well to give judgment of ouster against such person or persons, of and from any of the said offices or franchise, as to fine such person or persons, respectively, for his or their usurping, intruding into or unlawfully holding and executing any such office or franchise; and also to give judgment that the relator or relators in such information named, shall recover his or their costs of such prosecution; and if judgment shall be given for the defendant or defendants in such information, he or they for whom such judgment shall be given, shall recover his or their costs therein expended, against such relator or relators.

SEC. 3. It shall be lawful for the court in which any information as aforesaid shall be exhibited, to allow to the relator or relators, and the defendant or defendants such convenient time to plead, reply, rejoin, or demur, as to said court shall seem just and reasonable.

SEC. 4. Appeals may be taken from the decision of the circuit court, upon such terms as the said circuit court shall prescribe; or writs of error may be prosecuted whenever the supreme court, or any of the judges thereof in vacation, upon being presented with a copy of the record, shall certify that there is reasonable cause for the bringing such writ: The said supreme court, or judge in vacation, may impose such terms and conditions upon the party wishing to prosecute such writ of error, as to the said court or judge may seem reasonable and just. The allowance of a writ of error shall operate, after notice thereof, as a stay of proceedings in the circuit court, until the determination. But writs of error without superseas, shall issue as writs of right, as in other cases.

APPROVED: March 3, 1845.

CHAPTER LXXXVII.

RECORDS AND RECORDERS.

SECTION

1. County recorders, how elected; term of office.
2. Elections, how conducted; commission.
3. To give bond; its condition.
4. Elections; vacancies, how filled; contested elections, how decided.
5. When recorder may appoint deputy; to keep office at county seat, or it shall be vacant.
6. Recorder fined for entering upon duties without giving bond, but acts valid.
7. Recorder to keep book; what he shall enter therein.

SECTION

8. Books to be provided by county.
9. Transcript of old records in Randolph county to be evidence; fees for furnishing copies.
10. Officer refusing to deliver records, papers, &c., to be compelled by summary process.
11. Officer executing warrant in such case may break open doors, &c.; his powers and liability.
12. Party aggrieved, may apply to a judge for an examination, who may cite parties to appear, and may decide the matter.

SECTION 1. County recorders shall be elected in the several counties of this State on the first Monday in August, on the expiration of the terms of those now in office, and every two years thereafter. When so elected, they shall continue in office for the term of two years, and until their successors are elected and qualified.

SEC. 2. The election of county recorders shall, in all things, be conducted, and returns thereof be made to the office of the secretary of State, as provided by the chapter regulating elections; and upon such election being made, the Governor shall commission such county recorder, to continue in office for two years; which commission shall be transmitted by the secretary of State to the clerk of the county commissioners' court of the proper county, and it shall be the duty of said clerk to give immediate notice to such recorder of the receipt of his commission.

SEC. 3. County recorders, previous to entering upon the duties of their office, shall enter into bond to the people of the State of Illinois, each with one or more sufficient sureties, in a bond of five hundred dollars, conditioned for the true and faithful execution of the duties of his office, and to deliver up the records and other writings belonging to his office, safe and undefaced, to his successor in said office: which said bond shall be filed in the office of the clerk of the county commissioners' court, and there safely kept, in order to be made use of, for making satisfaction to the parties that shall be damnified or aggrieved, as is or shall be in such cases directed by law. The securities to such bonds shall be approved by the county commissioners' courts of the respective counties for which said recorders are elected.

SEC. 4. The election for county recorders shall be held at the same times and places, and conducted in all respects as elections of county commissioners; and all vacancies shall be filled in the same manner; and all contested elections for recorders shall be decided as in other cases. And in case of a contested election between two or more persons who shall have been voted for, for the office of county recorder, a commission shall not issue until such contest shall have been duly decided according to law.

SEC. 5. County recorders may appoint deputies only when they shall be disabled by sickness or other bodily infirmity. They shall keep their offices at the

seat of justice of the counties respectively, and on a neglect, or a refusal to do so, the county commissioners' court may declare the same to be vacant.

SEC. 6. No recorder shall enter upon or officiate in his said office, before he hath given such security, as is provided in section three, upon pain of forfeiting the sum of one hundred dollars, one-half to the State, and the other half to him or them that shall sue for the same, to be recovered as aforesaid: but no record made by him shall be vacated or so avoided as to operate against the parties to the instrument recorded, by reason of such recorder not giving such bond.

SEC. 7. Every recorder shall keep a fair book, in which he shall immediately make entry of every deed or writing brought into his office to be recorded, mentioning therein the date, the parties and the place where the lands, tenements or hereditaments granted or conveyed by the said deed or writing are situate, dating the entry on the day on which such deed or writing was brought into his office, and shall record all such deeds and writings in regular succession, according to the priority of time of their being brought into said office; and shall also make and keep a complete alphabetical index to each record book, showing the page on which each instrument is recorded, with the names of the parties thereto: he shall give a receipt to the person bringing such deed or writing to be recorded, bearing date on the same day as the entry, and containing the abstract aforesaid, for which entry and receipt he shall be entitled to no fee or compensation whatever.

SEC. 8. It shall be the duty of the county commissioners' courts to provide the county recorders of their respective counties with well bound books necessary to the execution of the duties of their offices, to be paid for out of the county treasuries.

SEC. 9. All copies and transcripts of the ancient books, records and papers, bearing date prior to the thirteenth day of July, in the year of our Lord one thousand seven hundred and eighty-seven, now in the office of the recorder of the county of Randolph, which may be made by the said recorder, from the said papers or records, and attested by him, shall be as authentic in any court of record in this State as if given by the secretary of State; and the said recorder shall be entitled to the same fees for such copies, transcripts and attestations, as he is now entitled to by law for the performance of similar services.

SEC. 10. If any person, whose office has become vacated or determined, or his executors or administrators, shall neglect or refuse to deliver over any record, book, paper, document or other article of public property, when thereto lawfully required by the successor to such officer or other person entitled to the custody thereof, it shall and may be lawful for any judge of the supreme or circuit court of the proper county, upon the affidavit of any competent person, setting forth proper facts, to issue his warrant, directed to the sheriff or coroner of the proper county, commanding him to seize all the records, books, papers, documents and other public property belonging or appertaining to the said officer, and deliver the same to the person entitled to the custody thereof, to be named in such warrant.

SEC. 11. It shall be lawful for the officer executing any warrant issued as aforesaid, to break open any doors, trunks or places in which any of the records, books, papers, documents or other public property, in such warrant commanded to be seized and secured, may be concealed, or in which he may suspect them to be; and in case of resistance, to arrest any person or persons who may resist the execution of such warrant, and to carry him, her or them before some judge or justice of the peace, to be dealt with as other persons obstructing the execution of such process; and the officer executing such warrant, may call to his assistance the

power of the county, in the same manner as in the execution of other process. And any officer to whom any such warrant may be directed and delivered, who shall neglect or refuse to execute and return the same according to law, or otherwise fail to perform any of the duties herein required of him, shall forfeit and pay a sum, not exceeding one thousand, nor less than one hundred dollars, to be recovered by indictment, to the use of the county, in any court of competent jurisdiction.

SEC. 12. It shall be lawful for any person who may think himself aggrieved by the issuing of any warrant as aforesaid, to apply to any judge of the supreme or circuit court of the proper county, who, if he be satisfied, upon the affidavit of the applicant, that there is good cause to believe that injustice has been, or is about to be done, under, or by virtue of such warrant, shall issue a citation to all persons interested therein, commanding them to appear before such judge, at a place and time to be in such citation named, which shall be executed by the sheriff or coroner as process issued by the supreme or circuit court. And the judge shall have the power to enforce obedience to such citation by attachment, to be issued by him, and shall have power to proceed in a summary way, and determine according to right and justice, and may issue his warrant for the restoration of any book, record, paper, document or other article of property, which shall appear to him to have been improperly seized or delivered over; which warrant shall be executed in the same manner, and the officer to whom it is directed shall have the same powers, and be liable to the same penalties for neglect of duty, as upon other warrants issued under the provisions of this chapter.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Acts Nos. 23 and 24.]

CHAPTER LXXXVIII.

REPLEVIN.

SECTION

1. Replevin may be maintained for goods wrongfully taken or detained.
2. In what cases action of replevin will not lie.
3. Plaintiff to make oath; its contents.
4. Plaintiff to give bond to the sheriff.
5. Proceedings to be by plaint and summons.

SECTION

6. Judgment in case plaintiff fails; in case he succeeds.
7. Who may sue on bond, if breach be made.
8. If sheriff fail to take bond, he shall be liable.
9. Avowry and cognizance, in cases of distress for rent.
10. When oath may state belief of defendant.

SECTION 1. Whenever any goods or chattels shall have been wrongfully distrained, or otherwise wrongfully taken, or shall be wrongfully detained, an action of replevin may be brought for the recovery of such goods or chattels, by the owner or person entitled to their possession.

SEC. 2. No action of replevin shall lie at the suit of the defendant in any execution or attachment, to recover goods or chattels seized by virtue thereof, unless such goods and chattels are exempted, by law, from such execution or attachment; nor shall an action of replevin lie for such goods and chattels at the suit of any other

person, unless he shall, at the time, have a right to reduce into his possession, the goods taken.

SEC. 3. The person or persons bringing such action, or some one in his, her or their behalf, shall, before any writ shall issue, make oath or affirmation before the clerk of the circuit court, or any justice of the peace of the proper county, that the plaintiff in such action is the owner of the property described in the writ and about to be replevied, or that he is then lawfully entitled to the possession thereof; and that the same has not been taken for any tax, assessment or fine, levied by virtue of any law of this State; nor seized under any execution or attachment against the goods and chattels of such plaintiff, liable to execution or attachment.

SEC. 4. Before the execution of any writ of replevin, the party suing out such writ, shall give bond to the sheriff, with good and sufficient security, in double the value of the property about to be replevied, conditioned that he or they will prosecute such suit to effect, and without delay, and make return of the property, if return thereof shall be awarded, and save and keep harmless the said sheriff in replevying such property; and the sheriff shall thereupon serve such writ, and deliver the property therein mentioned to the party suing out such writ.

SEC. 5. The proceedings in an action of replevin shall be commenced by *plaint*, with a summons to the defendant, in which shall be stated a description of the property to be replevied, and the sheriff shall return the bond by him taken together with the writ, to the clerk who shall file the same.

SEC. 6. If any plaintiff in the action of replevin shall fail to prosecute his suit with effect, and without delay, or shall suffer a nonsuit or discontinuance, or if the right of property shall be adjudged against him, the court shall give judgment for a return of the property taken, and damages for the use of the property from the time it was taken until return thereof shall be made; and if judgment be given for the plaintiff, he shall recover damages for the detention of such property while in the possession of the defendant; and the damages in either case shall be assessed by the jury, in case of a trial; but if the plaintiff shall not prosecute his suit, or if judgment shall in any manner be given for the defendant, without a trial, the damages in such case may be assessed by the court, on hearing such testimony as may be offered on the subject.

SEC. 7. If at any time the condition of the bond required by the fourth section of this chapter shall be broken, the sheriff, or plaintiff in the name of the sheriff to his own use, as the case may be, may sue and maintain an action on such bond, for the recovery of such damages as may have been sustained in consequence of the breach of such condition.

SEC. 8. If any sheriff shall fail to take and return a bond, as required by the fourth section of this chapter, or shall return an insufficient bond, such sheriff shall pay to the party injured, all damages which he may sustain or be put to, in consequence of such neglect; to be recovered by an action on the case in the circuit court.

SEC. 9. It shall be sufficient for the defendant, in all cases of replevin for distress taken for rent, to avow or make cognizance generally, without particularly setting forth the tenure or title to the lands whereon such distress was taken.

SEC. 10. When the oath required in section three, is made by another in behalf of the claimant, it shall be sufficient to state that he believes the facts stated in such affidavit to be true.

CHAPTER LXXXIX.

REVENUE.

SECTION

1. All property, real and personal, to be taxed.
2. What considered "real property."
3. What considered "personal property."
4. What property exempt from taxation.
5. Lands reserved by Indian treaty taxable from date of treaty.
6. Stock or exchange brokers to obtain license from county commissioners' court; penalty for failing to obtain license before first of May.
7. Hawkers and peddlers to be licensed, and by whom; tax therefor; penalty for peddling without license, and how recovered; who exempt from penalty imposed herein.
8. County tax of not exceeding four mills on the dollar may be levied by county commissioners' courts at their March terms; county tax to be lien on property taxed.
9. What kind of funds receivable for revenue.
10. Minimum value of lands to be three dollars per acre.
11. Auditor to obtain from United States land offices, abstracts of lands sold, containing descriptions, &c., with maps.
12. To transmit to county clerks, lists of such lands, annually.
13. County treasurer to be assessor, *ex officio*; to be sworn; form of oath; if treasurer do not qualify, his office deemed vacant, and filled as in other cases; treasurer to keep his office at county seat; if he do not, his office to be vacant.
14. Clerk to deliver to assessor a list of taxable lands and town lots, &c.; shall add thereto, auditor's list of lands becoming taxable for that year; also, list of delinquent lands sold to State.
15. Assessor to make out lists of taxable property; form of list; lands belonging to State not included.
16. Assessor to take value of property, may require from owner, statement of property under oath; manner of entering in assessment in book; unimproved lands assessed in blocks.
17. If owner of land can not be found, it may be assessed in name of patentee.
18. Penalty for giving false list of property.
19. Non-resident lands, once listed, need not be re-listed unless divided.
20. Real property omitted by mistake, may be subsequently listed for the whole time, charged with arrears and costs; clerk of county court may also list lands, and have them charged accordingly.
21. Assessment to be completed by first Monday of August, and returns, &c., made to county clerk.
22. Clerk to return lists of forfeited lands and town lots to the auditor, and to collector, by the second Monday of September.
23. Assessor to add up the total valuation and tax.
24. Clerk to return amount of State tax to the auditor, who shall charge it to the collector.

SECTION

25. Shall also return list of aggregate State and county taxes levied in his county, stating rate of taxation.
26. If valuation of assessor be too high, court, on application of aggrieved party, may reduce it.
27. Sheriff to be *ex officio* collector; if he fail to qualify as such, his office to be vacated.
28. Collector shall give bond; form thereof; shall be sworn, &c.
29. Bond to be recorded, and transmitted to office of secretary of State; record thereof to be evidence.
30. Auditor may prosecute bonds of delinquent collectors.
31. Lists of taxable property to be delivered to collectors.
32. Collectors, on receiving lists shall proceed to collect.
33. When lien for taxes shall attach; its effect; sale of property not to divest lien.
34. If owner of property be not at home, collector may leave notice.
35. If tax remain unpaid ten days after demand, collector may levy on and sell property; personal property to be first sold.
36. Collector to sell, after giving ten days' notice.
37. Sale to be by public auction.
38. Fees of collectors.
39. General power of collectors, and of county commissioners' courts, to collect delinquent taxes.
40. If taxes be twice paid, duty of officers.
41. When tax is paid, collector to make entry and give receipt.
42. Funds, what kind receivable for State revenue.
43. Revenue to be paid into State treasury by first Monday of March.
44. County revenue to be paid in monthly; final settlement to be by first day of June; county orders and jury certificates to be paid in and cancelled.
45. At June term, collector shall return sworn statement of taxes not collectable, which shall be examined by the county commissioners' court; collector to be credited with the amount of such uncollectable taxes.
46. If personal property can not be found out of which to collect tax, real estate may be returned to circuit court; form of such return.
47. Collector to advertise previous to such application; publication, how made; what it shall contain; shall fix day of sale; advertisement to be deemed sufficient notice; *proviso* as to publication.
48. Collector not to be credited with uncollected taxes, unless he hath used proper diligence.
49. Printer to transmit copies of paper containing advertisement to certain officers.
50. Collector to sell such lands, on the day advertised for.
51. Person bidding tax for least quantity of land, to be the purchaser.

SECTION

52. Sale continued until such lands are sold.
53. Purchaser refusing to pay, land to be re-sold.
54. Delinquent list to be filed five days before term of circuit court.
55. When no costs paid.
56. Advertisement, with proof of due publication to be filed in circuit court.
57. Report and certificate to be recorded in circuit court; report to be docketed; form of entry thereof.
58. If no defence be interposed, court may render judgment and order sale; form of order of sale.
59. Form to be pursued, &c.
60. Clerk to deliver copy of report, with the order of court to collector, which shall be deemed process for sale of the lands; sale of lands and return thereof.
61. Tax may be paid at any time before sale; collector to make report of such payment.
62. In description of lands, letters and figures may be used.
63. County commissioners' clerk to attend sale and keep record thereof; unsold lands stricken off to the State.
64. Certified record and list of forfeited lands, to be forwarded to auditor.
65. Penalty, if clerk fail to attend sale of lands.
66. Collectors to make payment into State treasury in thirty days; into county treasury in ten days; county orders, when paid in.
67. Purchaser of lands to receive certificate, &c.
68. Certificate assignable.
69. Real estate, how may be redeemed; rights of infants, &c., saved.
70. Collectors and clerks prohibited from purchasing at tax sales.
71. Collectors' deeds, when to be made; one deed may include several tracts of land.
72. Deed to be acknowledged and recorded.
73. Deed, what to be evidence of; what to be proved in order to defeat title under such deed; claimant against deed must show title.
74. Successor of collector making sale, may make deed for him; vacancy, how filled.
75. Sale to be valid, notwithstanding error in name of owner.
76. Records of county court, and copies thereof, what to be evidence of.
77. Lands stricken off to State to be absolutely forfeited; other titles barred.
78. May, however, be redeemed; how redeemed; rights of minors, &c., saved.
79. Clerk to make return, semi-annually, to the auditor, of lands so redeemed; shall also make payment.
80. When land forfeited to the State and not redeemed, shall be sold; by whom sold; clerk's fees.
81. Auditor to furnish clerks with lists of forfeited lands, biennially.

SECTION

82. Publication of notice of sale of forfeited lands, how made.
83. Lands not to be sold for less than all taxes, interest and costs due.
84. Time and manner of sale; continuance thereof.
85. If payment not made forthwith, land may be re-sold.
86. Certificate to be given to purchaser.
87. Auditor, on presentation of such certificate, to make deed; his fee therefor.
88. Forfeited lands not sold at auction, to be sold at private sale.
89. Auditor's deeds, where to be recorded.
90. Officer selling, the State or county not to be liable to purchaser for money paid in error.
91. Proof of erroneous sales, how made; entry thereof.
92. Clerks to pay over redemption money; failure to vacate office; vacancy, how filled.
93. Lands sold by State to be taxed; lands forfeited to State not to be taxed.
94. Canal lands to be forfeited and sold for non-payment of taxes.
95. Purchaser receiving redemption money releases his claim to land.
96. Costs on advertised lands to be paid.
97. Purchaser suffering second sale, to lose benefit of the first.
98. Sheriff not to be treasurer; treasurer not to be sheriff or collector.
99. Collector refusing to sell, responsible for taxes.
100. Penalty, if clerk or collector fail to make payment.
101. If collector fail to pay, treasurer to notify him of motion to next circuit court, for judgment, &c.; court to try case, compel production of books, &c.; notice, how served.
102. If collector or clerk fail to pay over, auditor may proceed by motion in supreme court.
103. Collector, for improperly returning lands as delinquent, how punished.
104. Penalty against treasurer for refusing to act as assessor; vacancies, in his office, how filled.
105. Collectors forbidden to speculate in auditor's warrants.
106. How punished therefor.
107. Collectors to pay school moneys to commissioners; auditor to give them credit therefor.
108. Fees of officers concerned in assessing and collection of revenue, how ascertained, collected and paid.
109. Laws repealed.
110. Taxes already levied, how collected.
111. Erroneous sales, how corrected; auditor to credit collector with amount of error.
112. Fees of clerks for making out abstracts of lands, &c.
113. Deeds of sheriff or collector not to be *conclusive*, but only *prima facie* evidence of certain facts.

SECTION 1. All property, real and personal, within this State, shall be liable to taxation, subject to the exceptions hereinafter stated.

SEC. 2. The term "real property," with respect to the assessment and collection of the revenue, shall be construed to include all lands within this State, and all buildings and other things erected on, or affixed to, the same; and the terms "lands" and "lots," whenever they occur in this chapter shall be construed as having the same meaning as "real property."

SEC. 3. The term "personal property" shall be construed to include all household furniture, goods and chattels, all ships and vessels, whether at home or abroad, all moneys on hand, and moneys loaned, whether within or without the State, all

public stocks, stocks in turnpikes, bridges, insurance companies and moneyed corporations; also, all commissions, and every species of property not included in the description of real estate.

SEC. 4. The following property shall be exempt from taxation: *First*, the real and personal property of the United States and of this State. *Secondly*, all lands sold by the United States, until the term of five years from the sale thereof, shall have expired: *Provided*, That if Congress shall pass a law, expressing the consent of the federal government that such lands may be taxed as soon as sold, then they shall be subject to taxation in accordance with the provisions of such law: *Provided further*, That this exemption shall not extend to lands acquired by the United States by purchase of individuals on the re-sale of such lands by the United States. *Thirdly*, all lands belonging to the school fund of any township in this State, and every school house, court house, jail, and the land whereon such buildings are situated, all property which is, or may be exempt from taxation by special law, and all county lands and buildings set apart for county purposes, not to exceed five acres. *Fourthly*, every building erected for religious worship, the pews and furniture within the same, and the land whereon such building is situated, not exceeding ten acres; also, every burial ground not exceeding ten acres, or such quantity as in any case may have heretofore been exempted by law: *Provided*, That such personal or real property shall not be exempt from taxation longer than the same is so used. *Fifthly*, every building erected for the use of any literary, religious, benevolent, charitable or scientific institution, and the tract of land on which the same is situated, not exceeding ten acres; also, the personal property belonging to any such institution, and connected with, and set apart for the use thereof.

SEC. 5. Lands reserved to, or for any individual, by any treaty between the United States and any Indian tribe, or nation, shall be liable to taxation from the date of the confirmation of such treaty.

SEC. 6. Every person exercising the business of a stock or exchange broker, in buying or selling stocks, bank notes, gold or silver money, or bills of exchange, or lottery tickets, shall be required to obtain a license therefor from the clerk of the county commissioners' court of the county in which he resides, which shall authorize him to carry on such business for one year from the date thereof; for which license he shall pay to the said clerk for the use of the State, the sum of one hundred dollars. Any broker failing to obtain such license, on or before the first day of May in each year, shall forfeit and pay to the State the sum of five hundred dollars, to be recovered by action of debt in the name of the State of Illinois, in any court having jurisdiction of the amount.

SEC. 7. Every hawker or peddler who may desire to hawk or peddle any goods, wares, merchandize or clocks, throughout the State, shall, on the payment of fifty dollars for the use of said State, to the secretary of State, be entitled to receive a license authorizing him to pursue such occupation in every county of the State; and any hawker or peddler may procure a license for a single county on the payment to the county commissioners' clerk of said county, for the use of the county, the sum of ten dollars. Any person pursuing the occupation of a hawker or peddler within this State, or any of the counties thereof, without license, shall forfeit and pay, one-half for the use of the person complaining thereof, and the other half for the use of the State, the sum of one hundred dollars, to be recovered by action of debt in the name of the State of Illinois, before any justice of the peace, or probate justice of the peace, subject to appeal to the circuit court as in other cases:

Provided, That this section shall not apply to persons whose ordinary occupation is not that of a peddler, nor to those engaged in vending articles manufactured in this State.

SEC. 8. The county commissioners' court shall have the power to levy a tax in their respective counties for county purposes, but they shall in no case exceed the amount of four mills on each dollar's worth of property, unless specially authorized by law; and said county tax shall be levied at the March term of said courts, and collected with the State revenue. The same lien created to secure the State revenue, shall also exist in favor of the county revenue.

SEC. 9. The county revenue shall be collected in gold and silver coin, county orders and jury certificates issued by the county, and in no other currency.

SEC. 10. The minimum value of all lands in this State for the purpose of taxation, shall be three dollars per acre.

SEC. 11. It shall be the duty of the auditor of public accounts, in cases where such abstracts have not already been obtained, and as the same may become necessary, to obtain from the several land offices of the United States at which lands within this State are sold, abstracts, containing a description of all lands sold at each office, the dates of sale, and the names of purchasers; also, maps of the several land districts, where such abstracts and maps have not already been procured.

SEC. 12. The auditor shall annually transmit to the said clerks, on or before the first day of February, a list of all lands in their respective counties which may have become subject to taxation within the preceding year.

SEC. 13. The treasurer of each county shall be *ex officio* the assessor. Before he enters upon the discharge of the duties of his office of assessor, he shall take and subscribe the following oath or affirmation: "I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will faithfully, diligently and impartially perform all the duties required of me by law, as the assessor of taxable property in the county of _____, and that I will in no instance value any lands as low as at three dollars per acre, which I believe to be worth more." A refusal or neglect of the treasurer to qualify and act as assessor, shall vacate his office as treasurer, and the county commissioners' court shall thereupon appoint some suitable person to fill such vacancy, who shall hold his office until his successor is duly elected and qualified. The treasurer shall keep his office at the county seat, and his neglect to do so shall vacate his office which may be filled as aforesaid.

SEC. 11. Every clerk shall, on or before the first Monday of March, in each year, cause to be delivered to the assessor of his county, in a well bound book, a transcript containing a list and description of all taxable lands and town lots lying within his county, except such as have been sold to the State, and remain unredeemed, with the names of purchasers of lands from the United States and from this State, together with the names of the present owners in a separate column when the same are known; and the said transcript when returned by the assessor, shall be kept by the said clerk in his office for the use of future assessors. He shall, annually before delivering said transcript to the said assessor, add thereto the auditor's list of lands in his county, which may have become taxable during the preceding year. He shall also specify in a separate and distinct list, and deliver the same to the assessor as aforesaid, all delinquent lands and town lots lying within his county, which may have been previous to that time forfeited to the State for taxes, and are unredeemed from such forfeiture; and each year before delivering the same to the assessor, he shall add thereto the unredeemed lands and town lots

which may have been forfeited to the State subsequent to the previous assessment, and said lists of lands and town lots shall be made out in numerical order: *Provided*, That where such transcripts and lists have heretofore been made, the said transcripts and lists shall be furnished by the clerks to the assessor, with such additions as are herein specified.

SEC. 15. The assessor of each county shall, upon the receipt of such transcript, proceed to make out lists of all taxable property within his county, the said lists being of tabular form, with separate columns for the names of owners of property, the kind of property, the value of each kind, and the total value of each person's taxable property, and such other columns as may be deemed necessary, as near as convenient in the following form:

Persons for whom tax is paid and date of payment,	
Value of taxable property except lands,	
Value of stocks,	
Stocks in companies,	
Ships and vessels,	
Money on hand,	
Money loaned,	
Retail stores,	
Wholesale stores,	
Carts,	
Wagons,	
Carriages,	
Watches,	
Clocks,	
Servants of color,	
Cattle,	
Horses and mares,	
Jennies,	
Asses,	
Stud Horses,	
Value of personal property not enumerated,	
Total value of lands,	
Value of land per acre,	
Description of land,	
Acres of land,	
Town lots,	
Names of persons chargeable with tax,	

The assessor shall in no case include in such list any delinquent lands or town lots belonging to the State.

SEC. 16. Each assessor shall, without delay, on being provided with the lists aforesaid, proceed to take a list of the taxable property in his county, and assess the value thereof, by going to the place of residence of each owner of taxable property in his county. He may, if he shall deem it necessary, require every owner of taxable property to give in, under oath, either by himself or agent, a list and description of all his taxable lands, by townships, ranges, quarter-sections, tracts, lots or parts thereof, and the number of acres in each tract, with the improvements thereon, all town lots with the improvements thereon, all pleasure carriages, whether with two or four wheels, all horses, mares, jacks, jennies, mules, indentured servants, neat cattle, ships and vessels, stocks, money on hand and at interest, household furniture, and every other description of personal property, all capi-

tal employed each year in merchandizing, adopting as a criterion the value of the greatest amount of goods on hand at any time in the year; and he shall, in the presence of such person, enter the same in his book, and value each tract or lot separately, and each species of personal property separately, placing the description and value in figures opposite the name of the person owning or listing the same: *Provided*, That unimproved town lots may be listed and assessed in blocks.

SEC. 17. If any assessor shall be unable to find the owner of any lands or lots contained in his list, he shall value the same according to the best information he can procure, and enter the same on his list in the name of the patentee or present owner, if known.

SEC. 18. If any person shall give a false or fraudulent list, or refuse to deliver to the assessor, when called on for that purpose, a list of his or her taxable property, as required by law, the said assessor, as a penalty therefor, shall assess the property of such person at double its value.

SEC. 19. Lands and town lots owned by non-residents of the county, when once correctly listed for taxation by their owners, shall not be required to be listed again by them till a sub-division or change of ownership takes place.

SEC. 20. If any real or personal property shall be omitted in the assessment of any year or number of years, the same when discovered, shall be assessed by the assessor for the time being, and placed upon the assessment list with the arrearages of tax which might have been assessed with six per cent. interest thereon, from the time the same ought to have been paid; the clerk of the county commissioners' court shall also have power to list any property omitted for a previous year or years, and add the same to the collector's list, and report the same to the county commissioners' court at their next term; and said court is required to enter the same of record, and charge the collector with the same, and the clerk to certify said charges to the auditor at the time of certifying the allowances made to collectors.

SEC. 21. Every assessor shall complete the assessment of property in his county, on or before the first Monday of August in each year, and return to the county commissioners' clerk the abstract of lands furnished him by said clerk, also the list of delinquent real estate forfeited to the State and still owned by the same, with the valuation thereof, and his list and description of all taxable property within the county, with the names of owners when known, and valuation.

SEC. 22. The clerks shall make out copies of the said lists, and on or before the second Monday of September in each year, transmit a copy of the list of forfeited lands and lots with the valuation thereof to the auditor, and deliver a copy of the other to the collector of his county for the purpose of collection; and the commissioners' court shall be required to make all necessary corrections in the same.

SEC. 23. The assessor shall add up his own figures in the columns, expressing the total valuation of real estate, the total valuation of personal property, and the total amount of State tax, county tax and road tax.

SEC. 24. Every clerk shall immediately after the September term of the county commissioners' court transmit by mail to the auditor, a statement of the aggregate amount of State tax assessed in his county, and the auditor shall charge the same to the collector.

SEC. 25. The clerk of the county commissioners' court shall, at the same time as aforesaid, transmit to the auditor, a statement showing the aggregate amount of taxes on real estate in his county for State and county purposes respectively; also, a statement of the amount of taxes on personal property for State and county pur-

poses respectively, together with a statement of the rate of taxation levied for county purposes in his county.

SEC. 26. Any person feeling aggrieved by the assessment of his property, may, at the September term of the county commissioners' court, immediately succeeding such assessment, and not afterwards, apply to said court for a reduction of said assessment which may in the discretion of the court be made on proof that the valuation of the assessor was too high, which correction shall be made of record and a list certified by the clerk to the collector.

SEC. 27. The sheriff of each county shall be, *ex officio*, the collector of taxes, and his refusal to act shall vacate his office of sheriff, which shall be filled as in other cases of vacancy.

SEC. 28. Said collector, before he enters upon the duties of his office, shall execute a bond in a penalty of at least double the amount of the tax to be by him collected, and with such securities as the county commissioners shall deem sufficient; which bond shall be substantially in the following form, to-wit:

Know all men by these presents, that we, A. B., C. D. and E. F., securities, all of the county of _____ and State of Illinois, are held and firmly bound to the people of the State of Illinois, in the penal sum of _____ dollars, for the payment of which, well and truly to be made, we bind ourselves each of us, our heirs, executors and administrators, firmly by these presents. Signed with our hands and sealed with our seals. Dated at _____ this _____ day of _____ 184 . The condition of the above bond is such, that if the above bounden A. B., shall perform all the duties required to be performed by him as collector of the said county of _____ in the time and manner prescribed by law, and when he shall be succeeded in office, shall surrender and deliver over to his successor in office, all books, papers and moneys belonging to said county or to the State, and appertaining to his said office, then the above bond to be void, otherwise to remain in full force.

Signed, sealed and delivered in }
 presence of G. H. }

A. B. [L. s.]
 C. D. [L. s.]
 E. F. [L. s.]

He shall also take and subscribe an oath before some person authorized to administer oaths, that he will faithfully, diligently and impartially, and to the best of his skill, judgment and ability, perform all the duties required of him by law, as collector.

SEC. 29. When approved by the county commissioners' courts, the said bond be entered upon their records, and immediately transmitted by their clerk to the office of secretary of State; certified copies thereof, under the seal of State shall be evidence in all the courts of this State; and the entry thereof in the records of the said courts shall be evidence within the county.

SEC. 30. The auditor shall direct the commencement of suits on the bonds of collectors, for the use of the State whenever he shall deem it for the public interest, for any breach of said bonds until the whole penalty if necessary is recovered, and it shall in all cases be his duty to cause suits to be commenced against delinquent collectors, and their securities, whenever said collectors have failed to make their final settlements, for the space of two months after the time fixed upon by law for that purpose.

SEC. 31. On the second Monday of September annually, or as soon as the collectors are qualified, every county commissioners' clerk shall deliver to the collector of his county, a copy of the list of taxable property returned by the assessor, and take duplicate receipts therefor, in which shall be specified the taxes on real and personal property respectively, one of which shall be filed in the clerk's office, and the other filed in the office of the county treasurer.

SEC. 32. Every collector, on receiving the assessment list from the clerk as aforesaid, and giving receipt for the same, shall proceed to collect the taxes charged in said list, by calling upon each person residing in his county, at his or her usual place of residence, and requiring payment thereof.

SEC. 33. The lien created by this chapter, for State and county purposes, on personal property, shall attach from and after the assessment list is received by the collector, and no sale or transfer of the same shall affect the claim of the State or counties, but the said property may be seized by the collector wherever found, and removed if necessary, and sold to discharge the taxes of the person owing the same at the time of such assessment, together with the costs and charges of collection.

SEC. 34. In case any person shall be absent from home, at the time of the call of the collector for his or her taxes, the said collector shall leave a written or printed notice with some member of the family, above the age of ten years, requiring payment of the same within ten days from the date thereof, and such notice shall be considered a sufficient demand for the taxes of such person, and the said collector shall be a competent witness to prove the service of said notice.

SEC. 35. In case any person shall refuse or neglect to pay his or her taxes when demanded, or within ten days thereafter, it shall be the duty of the collector to levy the same, together with the costs and charges that may accrue, by distress and sale of the personal property of such person as ought to pay the same, wherever the same may be found in the county. No real estate of any person shall be sold for taxes while personal property of such person can be found by the collector.

SEC. 36. The collector shall give public notice of the time and place of sale, the property to be sold, and the name of the delinquent, at least ten days previous to the day of sale, by advertisements to be posted up in at least three public places in the precinct where such sale is to be made.

SEC. 37. Such sale shall be by public auction, and if practicable, no more property shall be sold than sufficient to pay the tax, costs and charges due; the same shall, if convenient, be sold in parcels, and if sold for more than the amount necessary, the surplus shall be returned to the owner of such property.

SEC. 38. The collector shall be allowed the same fees and charges for making distress and sale of goods and chattels for the payment of taxes, as may be allowed by law to constables for making levy and sale of property on execution: *Provided*, The provisions of this chapter shall apply to the collection of all delinquent taxes due in any county in this State.

SEC. 39. The power to levy and collect, shall continue in the collector after his return and final settlement with the auditor, until the taxes shall be paid; if personal property of the person having failed to pay taxes, be found within his county, the county commissioners' court shall have power to issue process to any sheriff or constable for the collection of delinquencies, for which credit has been given to the collector.

SEC. 40. Whenever the taxes on the same property shall be paid more than once, for the same year, by different claimants, the collector shall make a return to the clerk of the county commissioners' court, of all such surplus taxes so received by him, together with the names of the several claimants thus paying; and the clerk shall make a record of all such cases, and transmit a copy thereof to the auditor of public accounts, who shall charge such collector with the portion of such surplus taxes belonging to the State.

SEC. 41. Whenever any tax is paid, the collector shall enter such payment in his list, and give the person paying the same, a receipt specifying the name of the person for whom paid, the amount paid, what year paid for, and the property on which the same was assessed, according to its description on the assessment list.

SEC. 42. The collectors of this State, shall collect the revenue for State purposes, in gold and silver coin, auditor's warrants, and in no other currency whatever.

SEC. 43. The collectors of the several counties shall pay annually into the State treasury, on or before the first Monday of March, all the taxes of the preceding year, for State purposes, except such delinquencies as may exist, deducting therefrom their commissions for collections.

SEC. 44. Every collector shall pay into the treasury of his county, at the end of every month, all taxes collected for the use of such county in his hands, except county orders and jury certificates, and on the first Monday of June annually, he shall make a final settlement, and account for and pay over the whole amount of revenue due the county, deducting therefrom the amount of taxes he may have been unable to collect by reason of the insolvency, removal or non-residence of persons charged with taxes. All county orders and jury certificates collected by him, shall be paid into the county commissioners' court at the said term, and cancelled.

SEC. 45. Every collector of revenue shall present to the county commissioners' court of his county, at the June term thereof, a list, upon oath, of the names of all persons charged with taxes on personal property, from whom no collection of said taxes have been made on account of the insolvency, removal or non-residence of such persons; said list shall be copied from the assessment list, and shall contain the valuation of the property, and the amount of tax shall be noted opposite the name of each person, whether he be insolvent, a non-resident or has removed, if removed, to what place, if a non-resident, his place of residence, if known; the collector shall certify that such list contains the names of all persons and a description of all personal property charged with taxes which have not been collected, and that the notes and remarks made opposite to the names of persons charged with taxes are correct and true according to his best information and knowledge; the said list shall be examined by the county commissioners' court, and errors and mistakes therein corrected, after which an order shall be made allowing the collectors credit for the amount of taxes due, or payable to the county on the same; the said list shall be filed in the office of the clerk of said court, and thereupon the said clerk shall certify under the seal of the court, to the auditor, the whole amount of taxes assessed upon real and upon personal property; the amount of taxes on personal property for which the collector has been allowed credit on account of insolvency, non-residence or removal of the persons charged therewith; and upon a settlement with the auditor, the collector shall file with him the said certificate, and shall be allowed a credit for the amount certified therein.

SEC. 46. When any person owning lands in any county in this State, shall fail to pay taxes assessed thereon, and the collectors shall be unable to find any personal property of such person in his county whereon to levy, of value sufficient to pay said taxes and costs, it shall be the duty of the collector to make report thereof to the circuit court of his county, at the first term in each year, for the preceding year or years, which report shall be in the following form :

List of lands, and other real estate, situated in the county of _____, and State of Illinois, on which taxes remain due and unpaid for the year herein set forth:

Name of present owner.	Town lots.	In whose name patented.	Cost.	Amount of tax.	Years for which tax is due.	Valuation.	Description.	County.

SEC. 47. Before making the application to the circuit court provided for in the preceding section, the collector shall publish an advertisement in some newspaper printed in his said county, if any such there be, and if there be no such paper printed in his county, then in the nearest newspaper in this State, which advertisement shall be once published, at least six weeks previous to the said term of the said circuit court; and the said advertisement shall contain a list of the delinquent lands and town lots to be reported to the said court, the names of the owners, if known, the amount of tax, interest and costs due thereon, and the year or years for which the same are due; shall give notice of the intended application to the court for judgment against said lands and town lots for said taxes, interest and costs thereon, and for an order to sell the said lands for the satisfaction thereof; and shall also give notice that on the fourth Tuesday next succeeding the day fixed by law for the commencement of the said term of the said circuit court, all the lands against which judgment shall be pronounced, and for the sale of which, such order shall be made, will be exposed to public sale at the court house of the said county, for the amount of said taxes, interest and costs due thereon; and the advertisement published according to the provisions of this section, shall be deemed and taken to be sufficient and legal notice, both of the aforesaid intended application by the collector, to the circuit court for judgment, and also of the sale of said lands, under the order of the said court: *Provided*, That if the publisher of such newspaper shall be unable or unwilling to publish the said list and notice accurately and properly, the collector shall select some other newspaper having the means and ability of making such publication in a satisfactory manner, having due regard to the circulation of such paper.

SEC. 48. The county commissioners' courts shall not allow credit to collectors for any taxes uncollected, unless they are satisfied that such taxes could not have been collected by reasonable and proper diligence, and that such diligence has been used without success.

SEC. 49. The printer publishing such notice and list shall be required to transmit, by mail, two numbers of each paper containing said list and notice to the auditor of public accounts, two to the treasurer of State, and two to the clerk of the county commissioners' court of the county in which the lands and lots advertised lie; and the said papers shall be filed, and kept in the offices to which they are sent.

SEC. 50. The collector shall attend at the court house, in his county on the day specified in the notice aforesaid, and then and there, at the hour of ten o'clock in the forenoon, proceed to offer for sale, separately, each tract of land and town lot in the said list, on which the taxes and costs have not been paid.

SEC. 51. The person at such sale, offering to pay the taxes and costs charged on each tract or lot, for the least quantity thereof, shall be the purchaser of such quantity, which shall be taken from the east side of such tract or lot.

SEC. 52. The collector shall continue such sale from day to day, until each tract of land or town lot contained in the delinquent list, on which the taxes and costs remain unpaid, shall be sold or offered for sale.

SEC. 53. The person purchasing any tract of land or town lot, or any part thereof, shall forthwith pay to the collector the amount of taxes and costs charged on said tract or lot, and on failure to do so, the said land or lot shall be again offered for sale, in the same manner as if no such sale had been made, at the commencement of the sale on the following day.

SEC. 54. The collector shall file the list of delinquent lands with the clerk of the circuit court, at least five days before the commencement of the term at which application for judgment is to be made.

SEC. 55. No costs shall be charged by the clerk of the circuit court, when the taxes are paid five days previous to the term of the said court.

SEC. 56. The collector shall obtain a copy of said advertisement, together with a certificate of the due publication thereof, from the printer or publisher of the newspaper in which the same shall have been published, and shall file the same with the clerk of the said circuit court, at the said term thereof, together with the said report, provided for in the forty-sixth section of this chapter.

SEC. 57. The clerk of the circuit court, upon the filing of such report and certificate of publication by the collector, shall receive and record the same in a book to be kept for that purpose, in which he shall enter all judgments, orders and other proceedings of the court in relation thereto, and shall keep and preserve the same as a part of the records of his office; and the said clerk shall place the said report and certificate of said collector at the head of the common law docket for said term, in the following form, to-wit:

STATE OF ILLINOIS

vs.

JOHN DOE, and others.

no book before
} Suit for taxes.

SEC. 58. It shall be the duty of the said court, upon calling the common law docket of said term, if any defence be offered, by any of the owners of said lands so reported, or by any person having a claim or interest therein, to hear and determine the same in a summary way, without pleadings; and if no defence be made, the said court shall pronounce judgment against the said lands, and shall thereupon di-

rect the clerk of said court to make out and issue an order for the sale of the same, which shall be in the following form, to-wit:

STATE OF ILLINOIS, }
 } .COUNTY. } .sect.

Whereas, A. B., collector of said county, returned to the circuit court of said county, on the day of 18 , the following tracts and parts of tracts of land as having been assessed for taxes, by the assessor of said county of , for the year 18 , and that the taxes thereon remained due and unpaid, on the day of the date of the said collector's return, and that the respective owner or owners have no goods and chattels within his county, on which the said collector can levy for the taxes, interest and costs due and unpaid, on the following described lands, to-wit:

And whereas, due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defence or show cause why judgment should not be entered against the said lands for the taxes, interest and costs due and unpaid thereon, for the year or years herein set forth: Therefore, it is considered by the court, that judgment be, and is hereby entered against the aforesaid tract or tracts of land, or parts of tracts, (as the case may be,) in the name of the State of Illinois, for the sum annexed to each tract or parcel of land, being the amount of taxes, interest and costs due severally thereon; and it is ordered by the court that the said several tracts of land, or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes, interest and costs annexed to them severally, be sold, as the law directs.

SEC. 59. The form as hereinbefore set forth shall be pursued, as near as the nature of the case will permit.

SEC. 60. It shall be the duty of the clerk, within five days after the adjournment of said court, to make out, under the seal of said court, a copy of the collector's report, together with the order of the court thereon, which shall hereafter constitute the process on which all lands shall be sold for taxes, and deliver the same to the collector of his county; and the collector shall thereupon cause the said lands to be sold, on the day specified in the notice given by the collector for sale of the same, and make return thereof to the said clerk, within twenty days after the day of sale.

SEC. 61. Any person or persons owning or claiming lands advertised for sale as aforesaid, may pay the taxes, interest and costs due thereon, to the collector of the county in which the same are situated, at any time before the sale thereof: *Provided*, That such collector shall be required to make a report to the court, before judgment is rendered, of all lands upon which the taxes may have been paid, subsequent to making his first report to the circuit court.

SEC. 62. In all advertisements for the sale of lands for taxes, and in entries required to be made by the clerk of the court, letters and figures may be used, as they have heretofore been, to denote townships, ranges, sections, parts of sections, the year for which taxes are due, and the amount of taxes, interest and costs.

SEC. 63. The clerk of the county commissioners' court shall attend all such sales of lands for taxes, made by the collector, and make a record thereof, in a book to be kept for that purpose, therein describing the several tracts of land and town lots, as they are described in the recorded list, stating, in separate columns, the State and county tax, with the costs thereon, and how much of each tract or lot was sold, and to whom sold; and all such tracts or lots as shall remain unsold, for want of bidders, shall be entered as sold to the State.

SEC. 64. The said clerk, immediately after such sale, shall transmit to the auditor of public accounts, a copy of such record, certified under the seal of the court, together with a separate list of lands and lots forfeited to the State, as aforesaid.

SEC. 65. If any clerk shall fail to attend any sale of lands, as required by this chapter, either in proper person or by a competent deputy, he shall forfeit and pay the sum of one hundred dollars, and shall be liable for indictment for such failure, and upon conviction, shall be removed from office.

SEC. 66. Within thirty days after any sale, the collector shall pay into the State treasury, the amount of taxes due the State upon lands advertised and sold as aforesaid, and make a final settlement with the auditor; he shall also, within ten days after such sale, pay into the county treasury, the amount of taxes due the county upon the same: *Provided*, That county orders received by him shall be paid into the county commissioners' court, at the next session thereafter.

SEC. 67. The clerk shall make out and deliver to the purchaser of any lands or lots, sold for the payment of taxes as aforesaid, a certificate of purchase, to be countersigned by the collector, describing the land or lot sold, as the same was described in the delinquent list, the amount of taxes and costs for which the same was sold, and that payment has been made therefor. If any person shall become the purchaser of more than one tract of land or lot, he may have the whole included in one certificate.

SEC. 68. Such certificate of purchase shall be assignable by indorsement, and an assignment thereof shall vest in the assignee, or his legal representatives, all the right and title of the original purchaser.

SEC. 69. Real estate, sold under the provisions of this chapter, may be redeemed, at any time before the expiration of two years from the date of sale, by the payment in specie, to the clerk of the county commissioners' court of the proper county, of double the amount for which the same was sold, and all taxes accruing after such sale, unless such subsequent taxes have been paid to the collector, as may be shown by the collector's receipt, by the person redeeming, with six per cent. interest thereon, from the first day of May, in each year, up to the time of payment: *Provided*, That if the real estate of any infant, *feme covert* or lunatic, be sold for taxes, the same may be redeemed at any time within one year after such disability be removed, upon the terms specified in this section.

SEC. 70. No collector or clerk of any county commissioners' court, shall be, either directly or indirectly, concerned in the purchase of any tract of land or town lot sold for the payment of taxes, under the penalty of one hundred dollars, to be recovered by action of debt.

SEC. 71. At any time after the expiration of two years from the sale of any real estate for taxes, if the same shall not have been redeemed, the collector, on request, and on the production of the certificate of purchase, shall execute and deliver to the purchaser, his heirs or assigns, a deed of conveyance for the real estate described in such certificate. When any person shall hold more than one certificate of purchase, of the same sale, the collector shall, on the request of such person, include as many tracts or lots described therein, in the said deed of conveyance, as such person may desire.

SEC. 72. The deed so made by the collector, shall be acknowledged and recorded in the same manner as other conveyances of real estate, and shall vest in the grantee, his heirs or assigns, the title of the property therein described.

SEC. 73. Deeds executed by the collector as aforesaid, shall be *prima facie* evidence in all controversies and suits in relation to the right of the purchaser, his heirs or assigns, to the land thereby conveyed, of the following facts: *First*, That the land conveyed was subject to taxation at the time the same was advertised for sale, and had been listed and assessed in the time and manner required by law. *Second*, That the taxes were not paid at any time before the sale. *Third*, That the lands conveyed had not been redeemed from the sale, at the date of the deed. *Fourth*, That the land was advertised for sale in the manner and for the length of time required by law. *Fifth*, That the land was sold for taxes, as stated in the deed. *Sixth*, That the grantee in the deed was the purchaser. *Seventh*, That the sale was conducted in the manner required by law; and, in controversies and suits involving the title to land claimed and held under, and by virtue of, a deed executed by the sheriff as aforesaid, the person claiming title adverse to the title conveyed by such deed, shall be required to prove, in order to defeat the said title, either that the said land was not subject to taxation at the date of the sale, that the taxes had been paid, that the land had never been listed and assessed for taxation, or that the same had been redeemed, according to the provisions of this chapter, and that such redemption was had or made for the use and benefit of persons having the right of redemption under the laws of the State: but no person shall be permitted to question the title acquired by a collector's deed, without first showing that he or she, or the person under whom he or she claims title, had title to the land, at the time of the sale, or that the title was obtained from the United States or this State, after the sale, and that all taxes due upon the land have been paid by such person, or by their agent, or the person under whom he claims title as aforesaid.

SEC. 74. If any collector shall die, resign, or be removed from office, or his term of service expire, after selling any real estate for taxes, and before executing a conveyance for the same, his successor, being then in office, shall execute such conveyance in the same manner as the officer making such sale might have done: *Provided*, That, in case the collector shall die, or be removed from office, before the taxes are collected, the county commissioners' court shall appoint a successor, to remain in office until an election is had.

SEC. 75. No sale of real estate for taxes shall be considered invalid, on account of the same having been charged in the assessment list in any other name than that of the rightful owner, if the said real estate be in other respects sufficiently described, and the taxes thereon were unpaid at the time of such sale.

SEC. 76. The books and records belonging to the office of the clerks of the county commissioners' courts, or copies thereof, certified by said clerks, shall be deemed sufficient evidence to prove the sale of any land for taxes, the redemption of the same, or payment of taxes thereon.

SEC. 77. Every tract of land or town lot offered for sale by any collector as herein before provided, and not sold for want of bidders, shall be, and the same is hereby declared to be forfeited to the State of Illinois, and thenceforth all right, title and claim of the former owner or owners, shall be considered as transferred to, and vested in the State.

SEC. 78. Lands and town lots, forfeited to the State for taxes, may be redeemed, at any time within two years from the time of the sale at which they were forfeited, by paying to the clerk of the county commissioners' court of the county in which said lands or lots are situated, double the amount for which such real estate was forfeited, and all taxes accruing thereon to the time of redemption, with interest on

each year's tax, at the rate of six per cent. from the first Monday of May, in each year, to the time of redemption: *Provided*, That any lands or town lots of any infant, *feme covert* or lunatic so struck off and forfeited to the State, may be redeemed, as provided in this section, at any time within one year after such disability be removed.

SEC. 79. On the first Monday in March, and semi-annually thereafter, it shall be the duty of the several clerks of the county commissioners' courts, to transmit to the auditor a list, with a full description of all the lands and town lots forfeited to the State, which have been redeemed during the preceding six months, which list shall be carefully noted in the books of the auditor; he shall also pay, at the same time, into the State treasury, the proportion of the redemption money belonging to the State, and monthly, into the county treasury, the proportion of such county.

SEC. 80. On the first Monday of September, one thousand eight hundred and forty-five, and every two years thereafter, all lands and town lots which have been forfeited to the State, and are unredeemed, shall be exposed for sale and sold at public auction, at the county seats of the respective counties in which they are situated, by or under the direction of the clerks of the county commissioners' courts; and the clerk of the county commissioners' court and the collector, for services rendered under this section, shall be entitled to the same compensation as they are allowed for like services by this chapter.

SEC. 81. It shall be the duty of the auditor, on or before the first Monday of July next, and biennially thereafter, to furnish to the said clerks, lists of lands and lots forfeited to the State, and unredeemed, lying within their respective counties.

SEC. 82. The said clerks, on the receipt of such lists shall, at least four weeks before the first Monday of September, publish a notice, in the newspaper having the greatest circulation in their respective counties, setting forth that all lands and lots forfeited to the State for taxes and unredeemed, will, on the first Monday of September next, be offered for sale at public auction, at the court house, and that a list of the same is kept at the clerk's office, subject to the inspection of any person who may desire to examine the same.

SEC. 83. Such lands and town lots shall not be sold for a less sum than the amount of State and county taxes, with the costs and interest thereon, from the forfeiture up to the time of sale.

SEC. 84. The clerk of each county, assisted by the sheriff, shall, on the first Monday of September aforesaid, at the hour of ten o'clock in the forenoon, proceed to offer for sale separately, each tract of land or town lot contained in such list, which shall have been forfeited to the State as aforesaid, and he may continue such sale from day to day until each tract or town lot in said list shall be sold or offered for sale.

SEC. 85. Every person purchasing lands or town lots at such sale, shall forthwith pay to the clerk the amount for which the same may have been sold, and, on failure so to do, the said lands or lots shall again be offered for sale as if no sale had been made.

SEC. 86. The said clerks shall immediately after such sale, execute and deliver to each person purchasing lands or lots at such sale, a certificate of purchase, and shall include in such certificate, all the lands and lots purchased by such person if the same is desired.

SEC. 87. Upon the presentation of such certificate to the auditor, the legal holder thereof shall be entitled to a deed, conveying all the right, title, interest and claim of the State to the tracts or lots described in said certificate; and for every deed of conveyance made as aforesaid, the auditor shall be entitled to receive the sum of twenty-five cents.

SEC. 88. At any time after the close of any such sale as aforesaid, the clerks may sell any of the lands and town lots offered for sale which were not sold for want of bidders, to any person wishing to purchase the same, who shall pay the State and county tax, together with the costs and interest due thereon.

SEC. 89. All deeds made by the auditor of public accounts under the provisions of this chapter, shall be recorded in the county where the lands or lots conveyed are situated.

SEC. 90. No money shall, in any case, be refunded out of the State or county treasury, to any purchaser of lands or lots sold for taxes on account of such lands or lots being erroneously sold, but the collector or other officer making such error shall be liable to pay double the amount of the same, and on failure to make such payment, the said purchaser may recover the said money of the said collector or other officer by action of debt before any justice of the peace or court having jurisdiction thereof: *Provided*, That if said lands were not taxable at the time they were assessed, or the taxes had been paid before the land was sold, then, in that case the State and county shall refund the taxes paid, upon the presentation of a certificate of the clerk of the county commissioners' court under seal of said court.

SEC. 91. Whenever it shall be made to appear to the satisfaction of the clerk of the county commissioners' court before the execution of a deed for lands or lots sold for taxes, that any tract or lot was sold which was not subject to be taxed, or upon which taxes had been paid previous to the sale, he shall make an entry opposite to such tracts or lots on the list of sales, that the same was erroneously sold, and such entry shall be evidence of the fact therein stated.

SEC. 92. The clerks of the county commissioners' courts shall be liable for all redemption money of lands and lots which may come into their hands as such, and shall pay the same over on demand being made by a proper person, and in case of failure or refusal so to do when demanded as aforesaid, then his office shall be considered vacated; and thereupon the county commissioners' court shall appoint some suitable person to fill such vacancy until the same be filled in the manner now prescribed by law.

SEC. 93. Lands sold by the State, though not granted or conveyed, shall be assessed in the same manner as if conveyed, but such lands, when forfeited to the State for the non-payment of taxes thereon, shall not in any case, be sold for such non-payment as other lands, and shall not afterwards be subject to taxation until again sold by the State.

SEC. 94. Whenever any purchaser of canal lands or lots, shall fail to pay the taxes assessed thereon, as required by the terms of sale provided by law, it shall be the duty of the collector forthwith to report such failure to the acting commissioner of the Illinois and Michigan canal, who shall enter the said lands or lots as forfeited to the State, and thenceforth all right, interest and title of the said purchaser shall cease; the said lands shall not in any case be sold for the non-payment of taxes, and any such sale, if made, shall be void.

SEC. 95. The receipt of the redemption money of any tract of land or lot by any purchaser, shall operate as a release of all claim to such tract or lot, under or by virtue of the purchase.

SEC. 96. Persons paying taxes on lands advertised for sale for the taxes due thereon, previous to the sale, shall be required to pay the costs of advertising, and all other costs which may have accrued up to the time of such payment.

SEC. 97. If any purchaser of lands sold for taxes, shall suffer the same to be again sold for taxes before the expiration of two years from the date of his or her purchase, such purchaser shall not be entitled to a deed for the land, until the expiration of two years from the date of the second sale; during which time the land shall be subject to redemption upon the terms and conditions prescribed in this chapter, except the person redeeming, shall only be required to pay for the use of such purchaser, the amount paid for the land, and double the amount paid by the second purchaser.

SEC. 98. No sheriff or deputy sheriff shall be eligible to the office of county treasurer, nor shall any county treasurer hold the office of sheriff or collector.

SEC. 99. If any collector, by himself or deputy, shall fail to attend any sale of lands advertised according to the provisions of this chapter, and make sale thereof as required by law, he shall be liable to pay into the State and county treasury, the amount of taxes and costs due upon the lands and lots so advertised, in the same manner as if they had been sold.

SEC. 100. If any collector or clerk shall fail to pay into the State treasury the amount of taxes or revenue due the State at the times and in the manner herein required, he shall be liable to pay ten per cent. per month upon the amount which he shall fail to pay as aforesaid, and for a failure to pay to the county, he shall be subject to the same penalty.

SEC. 101. If any collector shall fail to pay to his county the revenue due the same at the time and in the manner required by law, it shall be the duty of the county treasurer, to deliver or cause to be delivered to such collector and his securities, a notice in writing, informing them that at the next term of the circuit court of the county, a motion will be made for judgment against such collector for all sums due from him to the county at the time of making such motion, together with the damages allowed by law for default in not paying the same into the county treasury; and the circuit court of the several counties are hereby vested with jurisdiction to hear and determine all such motions, and to inquire into the amounts due from collectors, and give judgment for the same, together with the damages allowed by law; the said courts may compel the production of all books, papers, with vouchers in the possession of the collector, and pertaining to his office, to be used as evidence, if it shall appear to the court that any such books, papers or vouchers are, or may be, material evidence in the cause. The notice required by this section shall be served by any constable of the county, or coroner, at least five days before the motion is to be made.

SEC. 102. Upon the failure of any collector or clerk to pay money into the State treasury as required by law, it shall be the duty of the auditor to proceed against such collector by motion in the supreme court; a written notice of which shall be served on the collector and his securities at least twenty days before the motion is to be made; such notice shall state that a motion will be made for judgment against the collector for the amount due from him to the State at the time such motion is heard, and all damages allowed by law for default in the payment of the same, which notice may be served by any sheriff or coroner in the State, or by any person employed by the auditor for that purpose. The supreme court is hereby

vested with full power and jurisdiction to hear and determine all such motions, and to give judgments and award executions.

SEC. 103. If any collector shall receive the taxes upon any land or real estate, and shall knowingly include the same land or real estate in the list of lands returned by him on which taxes have not been collected, and the said lands shall be sold for the taxes thereon, he shall be deemed guilty of a misdemeanor, and on indictment and conviction thereof, shall be removed from office, and shall, moreover, be liable to the party injured for all damages.

SEC. 104. Any treasurer who shall fail to perform the duties required of him as assessor, (except in cases of sickness, when he may appoint a deputy for whose conduct he shall be responsible) shall forfeit and pay three hundred dollars to the use of the county, to be recovered by action of debt in the name of such county, and shall, moreover, be liable to pay to the county and State, all damages sustained by either county or State by reason of such failure, to be recovered by action on the case before any court having jurisdiction thereof; and if any assessor shall die or resign, the county commissioners' court shall appoint one, who shall perform the duties of assessor until an assessor is elected according to law.

SEC. 105. No collector shall, either directly or indirectly, be permitted to take, buy, shave or receive, by himself or agent, any auditor's warrant or warrants, at less than the full sum due thereon to the holder of such warrant or warrants.

SEC. 106. Any collector, who shall violate the provisions of the foregoing section, shall be liable to pay double the amount made by purchasing or shaving said warrants at less than their face, in an action of debt, before any court of the proper county; one-half the amount so recovered, shall go to the person complaining, and the other half shall be paid into the State treasury, and his office shall be vacated.

SEC. 107. Hereafter, the interest on the school fund belonging to the several counties of this State, shall not be required to be paid into the State treasury; but the auditor shall, as now required by law, ascertain the amount payable to each county, and certify the same to the collector, who shall thereupon pay over to the school commissioner of his county, such amount, and take his receipt therefor; and on settlement with the auditor, the said collector shall be credited with the amount specified in said receipt, in the same manner as if it had been paid into the treasury.

SEC. 108. The following fees and compensation shall be hereafter allowed to the following officers and persons herein named, for services rendered under the provisions of this chapter: To each assessor, a sum not exceeding one dollar and a half per day for every day necessarily employed in the performance of his duty as assessor, to be verified to the county commissioners' court; one-half to be paid out of the State treasury, and the other half out of the county treasury: to each collector, for collecting and paying over taxes, five per cent. on the first thousand dollars, and three per cent. on all additional sums paid over that amount; the same to be paid by the State and county, in proportion to the amount paid over to each. The collectors of the several counties shall hereafter be allowed two dollars for every forty miles necessary travel in going to, and returning from the seat of government, for the purpose of paying over the State revenue, which sum shall be paid out of the State treasury: to each clerk of the county commissioners' court, for making transcript of lands listed for taxation, and of delinquent lands and town lots, sold to the State for taxes and unredeemed, and for transmitting the list of lands sold for taxes, and the list of lands unredeemed from sale to the State, to the auditor of public accounts, one cent for each lot or tract included in each list; one-half of the same to be paid by the State, and the other half by the county: for assisting the collector in selling

lands for taxes, ten cents for each lot, tract or parcel of land sold, for which a certificate is given, to be charged and collected as other costs: *Provided*, That no certificates shall be issued for lands or lots forfeited to the State. For adding to the transcript for assessors, the auditor's list of lands which may have become taxable during the preceding year, one cent for each lot or parcel of land so added, to be paid out of the county treasury. To collectors, for each tract of land or town lot sold for taxes, five cents, to be collected, as costs, but no costs shall be paid to collectors on lands sold to the State, until the same are redeemed. For each collector's deed, twenty-five cents, and when more than one tract or lot is included therein, five cents for each additional tract or lot, to be paid to the collector by the person receiving such deed. To each printer, for publishing advertisement of the sale of lands for taxes, four cents for each lot or parcel of land advertised, to be paid out of the State treasury, and afterwards taxed and collected as costs: *Provided*, No fees shall be paid on the delinquent list until collected by the State.

SEC. 109. The following acts are hereby repealed, viz: "An act concerning the public revenue," approved, February twenty-sixth, one thousand eight hundred and thirty nine. An act supplementary thereto, approved, March first, one thousand eight hundred and thirty-nine; and "An act to amend an act entitled an act concerning the public revenue, approved, February 26, 1839, and "An act supplemental to said act," approved, March 1, 1839: approved, March sixth, one thousand eight hundred and forty-three.

SEC. 110. Taxes already levied, shall be collected under the provisions of the acts hereby repealed, liabilities existing or hereafter to exist on the part of sheriffs, collectors, clerks or other persons, under the provisions of said acts, shall be enforced in accordance with said provisions; and also, the rights acquired by individuals under any of the aforesaid laws.

SEC. 111. In all cases of erroneous sales of any tract or tracts of land for taxes, in any of the counties of this State, it shall be the duty of the clerk of the county commissioners' court, under the direction of said court, to correct said error or errors upon the books in his office, and to grant a certificate under the seal of said court, certifying that such tract of land was erroneously sold, which certificate being presented to the auditor of public accounts, it shall be the duty of the auditor to credit the collector of said county with the amount of said erroneous sale. The provisions of this chapter shall apply to all erroneous sales heretofore made in any of the counties of this State.

SEC. 112. The clerk of the circuit court in each of the counties of this State, shall have, for each tract of land against which judgment is prayed for delinquent taxes, the sum of three cents, and the clerk of the county commissioners' court, for making out abstracts and delivering the same to the clerk of the circuit court, the sum of two cents a tract: *Provided also*, That the clerk of the county commissioners' court shall be allowed one cent a tract for all other abstracts made out under the provisions of this chapter, one-half to be paid by the State and one-half by the county.

SEC. 113. So much of any act or acts, as makes the deed of the collector or sheriff, for lands sold for taxes, conclusive evidence that the land was advertised for the time and in the manner required by law, or of any other fact or proceeding, shall be and the same is hereby repealed, and said deed shall only be *prima facie* evidence of such fact.

APPROVED: March 3, 1845.

CHAPTER XC.

REVISED STATUTES.

SECTION

1. Titles of chapters composing the revised statutes, to be published in one volume.
2. List of laws repealed with limitations, &c.
3. List of acts of present session incorporated in the revised statutes, and now repealed.
4. General repealing clause, with its limitations, &c.
5. Laws of present session not made part of the revised statutes, to be bound therewith.
6. Previous acts when necessary, to be also published.
7. Ten thousand copies to be published.
8. Declaration of independence, &c., to be published.
9. Order and arrangement of publication.
10. Superintendent of publication, appointed.
11. Paper, type, size of volume, binding and lettering.
12. Paper, how to be procured and paid for.
13. Errors, &c., may be corrected in publication.
14. Chapters, secretary of State to copy; also, laws, &c.
15. Superintendent to furnish copy for printer.
16. Printer to deliver sheets, printed and pressed, to binder; within what time.
17. Binder to bind and deliver work to secretary of State, within what time.
18. Penalty for failure on part of printer and binder.
19. Revised statutes, how to be authenticated.
20. Printer and binder, how paid.
21. Revised statutes, how to be distributed.
22. Law of present session to prevail, if conflicting with revised statutes.

SECTION

23. If Chapters conflict, each to prevail as to its own subject-matter.
24. Last section to prevail, unless repugnant, &c.
25. The term "court" defined.
26. Acts not revived, by repeal of repealing acts.
27. Words, importing the singular or plural number, how to be taken and construed.
28. Words importing the masculine gender, shall be deemed to include the feminine.
29. Signification of the word "person" or "persons" defined and enlarged.
30. "Heretofore" and "hereafter," how to be understood.
31. "Insane person," &c., what included under style of.
32. "Month" and "year," legal construction of.
33. "Oath" to include an affirmation, &c.
34. "States" to include the Territories, and the District of Columbia.
35. The term "laws now in force," defined.
36. Rules of construction herein prescribed to prevail, unless, &c.
37. Revised statutes, when to go into effect.
38. No civil rights impaired by the repeal of acts herein enumerated.
39. Crimes, not hereby affected, save in mitigation of punishment.
40. No suit or prosecution pending, to be affected or abated by such repeal.
41. Laws for the limitation of actions, &c., not affected.
42. School and revenue laws to be incorporated as chapters in the revised statutes.

SECTION 1. The several chapters passed at the present session of the General Assembly, entitled as follows, to-wit:—

Abatement; Account; Advertisements; Aliens; Amendments and Jeofails; Apprentices; Arbitrations and Awards; Attachments before Justices; Attachments in circuit court; Attachments of Boats and Vessels; Attorneys and Counsellors at Law; Attorney General and Circuit Attorneys; Auditor and Treasurer; Bail; Bank notes; Bastardy; Births and Deaths; Castor Beans; Census; Chattel mortgages; Chancery; Charitable uses; Congress; Conveyances; Corporations; Costs; Counties and county commissioners' courts; County treasuries and county funds; Courts; Criminal Jurisprudence; Cumberland road; Detinue; Divorces; Dower; Drivers; Ejectment; Elections; Escheats; Estrays; Evidence and Depositions; Fees and Salaries; Ferries and Toll Bridges; Forcible entry and Detainer; Frauds and Perjuries; Fugitives from Justice; Gaming; Guardian and Ward; Habeas Corpus; Horses; Idiots and Lunatics; Inclosures and Fences; Insolvent Debtors; Inspections; Interest; Jails and Jailers; Joint Rights and Obligations; Judgments and Executions; Jurors; Justices of the Peace and Constables; Landlord and Tenant; Lands; Laws; Library State; Licenses; Liens; Limitations;

Mandamus; Marks and Brands; Marriages; Militia; Mills and Millers; Ne Exeat and Injunctions; Negotiable Instruments; Negroes, Mulattoes, &c.; Notaries Public; Oaths and Affirmations; Officers; Official Bonds; Partitions; Paupers; Penitentiary; Petitions; Practice; Printing and Binding; Probate Court; Quo Warranto; Records and Recordors; Replevin; Revenue; Revised Statutes; Right of Property; Right of Way; Roads; Saltpetre caves; Seat of Government; Secretary of State; Securities; Schools and School lands; Sheriffs and Coroners; Shows and Jugglers; Slander; Steam Boats; Surveyors; Trespass; Venue; Warehouses; Warrants of towns and cities; Weights and Measures; Wills; Wolves; shall be published in one volume, to be denominated "THE REVISED STATUTES."

SEC. 2. The following acts and parts of acts are hereby repealed, subject however to the restrictions, limitations and provisions of this chapter contained, that is to say:—

An act relative to pleas in abatement, and the abatement of suits by the death of parties—approved, December, 30, 1826.

An act to regulate actions of account—approved, January 11, 1827.

An act concerning the publication of advertisements—approved, December 28, 1836.

An act concerning amendments and jeofails—approved, January 11, 1827.

An act respecting apprentices—approved, December 30, 1836.

An act to apportion the representation of the several counties in this State—approved, January 14, 1836.

An act regulating arbitrators and referees—approved, January 6, 1827.

An act to amend an act entitled "An act regulating arbitrators and referees"—approved, March 1, 1833.

An act concerning attachments—approved, February 12, 1833.

An act to authorize the seizure of boats and other vessels by attachment in certain cases—approved, February 13, 1833.

An act to regulate proceedings by attachment before justices of the peace—approved, February 27, 1837.

An act relating to the attorney general and state's attorneys—approved, February 17, 1827.

An act to amend an act relative to the duties of the office of attorney general of this State—approved, February 5, 1833.

An act to amend an act entitled "An act relating to the attorney general and state's attorneys"—became a law, February 7, 1835.

An act concerning attorneys and counsellors at law—approved, March 1, 1833.

An act to consolidate the acts relative to the auditor and treasurer and election of attorney general—approved, March 2, 1833.

An act in relation to bank collectors—approved, February 7, 1835.

An act concerning special bail—approved, January 26, 1827.

An act concerning bills of exchange—approved, December 28, 1826.

An act to provide for the taking of the census or enumeration of the inhabitants of the State—approved, January 13, 1829.

An act prescribing the mode of proceeding in chancery—approved, February 13, 1833.

An act to provide for issuing writs of ne exeat and habeas corpus, and for other purposes—approved, February 11, 1835.

An act to authorize clerks of the circuit and county commissioners' court to appoint deputies in certain cases—approved, February 9, 1831.

An act to compensate clerks and other persons for services rendered in comparing poll books—approved, February 25, 1833.

An act requiring clerks of courts to renew their official bonds periodically—approved, February 26, 1833.

An act concerning conveyances of real property—approved, January 31, 1827.

An act authorizing courts of chancery to decree conveyances in certain cases—approved, December 17, 1824.

An act to amend the "Act concerning the conveyance of real property—approved, January 31, 1827," and for other purposes—approved, January 22, 1829.

An act concerning conveyances by county commissioners—approved, January 7, 1835.

An act in relation to the title of school and canal lands—approved, January 16, 1837.

An act concerning conveyances—approved, July 21, 1837.

An act concerning the recording of conveyances—approved, July 21, 1837.

An act simplifying the mode of acknowledgment of sheriff's deeds—approved, January 16, 1836.

An act to incorporate counties—approved, January 3, 1827.

An act to compel the payment of certain moneys into the several county treasuries—approved, January 11, 1823.

An act to authorize additional poll books to be opened at the county seats of the several counties in this State—approved, February 9, 1831.

An act establishing the courts of county commissioners—approved, March 22, 1819.

An act requiring the several clerks of this State to keep their respective offices at the county seat—approved, January 11, 1823.

An act concerning public officers—approved, February 12, 1835.

An act to amend an act entitled "An act establishing the courts of county commissioners, approved, March 22, 1819"—approved, March 1, 1837.

An act to increase the compensation of county commissioners—approved, July 21, 1837.

An act authorizing and requiring the county commissioners' courts to cause court houses and jails to be erected in each and every county in this State—approved, January 5, 1829.

An act to amend "An act concerning practice in courts of law, approved, January 29, 1827"—approved, December 30, 1828.

An act relating to courts of probate—approved, January 2, 1829.

An act establishing a circuit court north of the Illinois river—approved, January 8, 1829.

An act regulating the supreme and circuit courts—approved, January 19, 1829.

An act to provide for a suitable place for holding the supreme court—approved, January 22, 1829.

An act supplemental to the act entitled "An act regulating the supreme and circuit courts, approved, January 19, 1829"—approved January 23, 1829.

An act regulating the office of clerk of the supreme court—approved, February 15, 1831.

An act supplemental to the several acts regulating the supreme and circuit courts in this State—approved, February 16, 1831.

An act fixing the time of holding circuit courts in the counties of Madison and Calhoun—approved, February 16, 1831.

An act regulating the terms of holding the circuit courts in this State—approved, March 2, 1833.

An act to establish a uniform mode of holding circuit courts—approved, January 7, 1835.

An act allowing appeals in certain cases—approved, January 31, 1835.

An act dividing the State into judicial circuits—approved, January 17, 1835.

An act regulating the times of holding the supreme and circuit courts, and fixing the salary of the circuit judges—approved, February 13, 1835.

An act fixing the times of holding the circuit courts in the several counties therein named—approved, January 16, 1836.

An act to amend an act entitled “An act regulating the times of holding the supreme and circuit courts, and fixing the salary of the circuit judges, approved, February 13, 1835,”—approved, January 12, 1836.

An act supplemental to the several acts relating to the circuit courts in this State, approved, January 16, 1836.

An act supplemental to the several acts regulating the circuit courts in this State, approved, January 16, 1836.

An act supplemental to an act changing the times of holding the circuit courts in the third judicial circuit, passed at the present session of the General Assembly—approved, January 16, 1836.

An act concerning process—approved, February 25, 1837.

An act to legalize certain process in the third and fifth judicial circuits—approved, January 19, 1837.

An act fixing the times of holding circuit courts in the several counties in the fourth judicial circuit—approved, March 1, 1837.

An act prescribing the time of holding the circuit court in the county of Washington—approved, February 10, 1837.

An act fixing the terms of the courts in the first, sixth and seventh circuits—approved, March 4, 1837.

An act forming an additional judicial circuit—approved, February 4, 1837.

An act to legalize processes in the circuit courts of this State—approved, July 20, 1837.

An act to amend an act concerning process, approved, February 25, 1837, and for other purposes—approved, July 21, 1837.

An act concerning costs—approved, January 10, 1827.

An act relative to criminal jurisprudence—approved, February 26, 1833.

An act to regulate the apprehension of offenders, and for other purposes—approved, January 6, 1827.

An act to amend the “Act relative to criminal jurisprudence, approved, January 30, 1827”—approved, January 19, 1829.

An act to amend “An act to regulate the apprehension of offenders and for other purposes, approved, January 6, 1827”—approved, February 11, 1837.

An act to regulate the taking of delivery bonds—approved, March 1, 1833.

An act regulating the mode of taking depositions, and to provide for the perpetuating of testimony—approved, February 9, 1827.

An act concerning the action of detainee—approved, January 6, 1827.

An act amending the law concerning divorces—approved, January 12, 1827.

An act concerning divorces—approved, January 31, 1827.

An act amending the law concerning divorces, approved January 31, 1827—became a law, December 4, 1833.

An act to lay out the State into districts for the purpose of electing representatives to the Congress of the United States—approved, February 15, 1831.

An act for the speedy assignment of dower and partition of real estate—approved, February 6, 1827.

An act authorizing suits against persons whose names are unknown, in certain cases—approved, February 27, 1837.

An act confirming grants of property made for the encouragement of education, and for other purposes—approved, February 1, 1831.

An act to simplify proceedings in the action of ejectment—approved, January 13, 1836.

An act to amend the act regulating elections—approved, February 9, 1827.

An act directing the mode of electing electors of president and vice president of the United States—approved, January 11, 1827.

An act regulating elections—approved, January 10, 1829.

An act to amend an act entitled “An act to regulate elections,”—approved, February 28, 1833.

An act to amend an act entitled “An act to amend an act entitled an act to provide for the election of justices of the peace and constables, approved, January 7, 1835,” approved, February 6, 1835.

An act to amend an act entitled “An act to provide for the election of justices of the peace and constables”—approved, January 7, 1835.

An act to amend “An act regulating elections—approved, January 29, 1835.

An act making the clerks of the county commissioners’ courts, and county treasurers elective by the people—approved, February 7, 1837.

An act to regulate the inclosing and cultivating of common fields—approved, February 23, 1819.

An act regulating inclosures—approved, February 20, 1819.

An act to amend an act regulating inclosures—approved, February 27, 1835.

An act regulating escheats—approved, March 1, 1833.

An act concerning estrays—approved, February 9, 1835.

An act declaring what shall be evidence in certain cases—approved, January 10, 1827.

An act regulating the salaries, fees and compensation of the several officers and persons therein mentioned—approved, February 19, 1827.

An act in addition to an act regulating the salaries, fees, and compensation of the several officers and persons therein mentioned—approved, January 23, 1829.

An act to provide for the establishment of ferries, toll bridges and turnpike roads—approved, February 12, 1827.

An act supplemental to an act entitled “An act to establish and regulate ferries, approved, February 20, 1819”—approved, February 12, 1827.

An act to amend the several acts therein named relating to the several acts concerning the establishing and regulating ferries in this State—approved, January 19, 1833.

An act for the incorporation of fire companies—approved, February 12, 1835.

- An act concerning forcible entry and detainer—approved, February 2, 1827.
- An act amending an act entitled “An act concerning forcible entry and detainer, approved, February 2, 1827”—approved, February 28, 1837.
- An act for the prevention of frauds and perjuries—approved, February 16, 1827.
- An act to prevent fraudulent devises, and for other purposes—approved, February 28, 1833.
- An act concerning fugitives from justice—approved, January 6, 1827.
- An act to restrain gaming—approved, January 16, 1827.
- An act regulating the proceeding on writs of *habeas corpus*—approved, January 22, 1827.
- An act for improving the breed of horses—approved, January 3, 1829.
- An act regulating the estates of idiots, lunatics and persons distracted, and for other purposes—approved, February 12, 1823.
- An act further to secure the property of idiots, lunatics and distracted persons—became a law, January 19, 1831.
- An act to provide for the maintenance of illegitimate children—approved, January 23, 1827.
- An act to establish inspections within this State—approved, March 23, 1819.
- An act establishing and regulating the inspection of tobacco in this State—approved, January 12, 1829.
- An act to regulate the interest on money—approved, February 28, 1833.
- An act regulating the interest on money—approved, March 2, 1819.
- An act for the relief of insolvent debtors—approved, January 12, 1829.
- An act to incorporate such persons as may associate for the purpose of procuring and erecting public libraries in this State—in force, January 31, 1823.
- An act supplemental to “An act to incorporate such persons as may associate for the purpose of procuring and erecting public libraries in this State, approved, January 31, 1823”—approved, January 31, 1835.
- An act to incorporate the inhabitants of such towns as may wish to be incorporated—approved, February 12, 1831.
- An act further defining the powers and duties of trustees of incorporated towns, approved, January 31, 1835.
- An act concerning jails and jailers—approved, January 26, 1827.
- An act concerning judgments and executions—approved, January 17, 1825.
- An act prescribing the mode of summoning grand and petit jurors, and defining their qualifications and duties—approved, February 7, 1827.
- An act to amend “An act prescribing the mode of summoning grand and petit jurors, and defining their qualifications—approved, February 7, 1827”—approved, January 24, 1835.
- An act to amend “An act prescribing the mode of summoning grand and petit jurors, and defining their qualifications and duties”—approved, February 13, 1835.
- An act to provide for the election of justices of the peace and constables—approved, December 30, 1826.
- An act concerning justices of the peace and constables—approved, February 3, 1827.
- An act supplemental to the act entitled “An act concerning justices of the peace and constables—passed, February 3, 1827”—approved, February 12, 1827.
- An act to extend the jurisdiction of justices of the peace—approved, December 29, 1826.

An act to amend an act entitled "An act to provide for the election of justices of the peace and constables—approved, December 30, 1826"—approved, January 13, 1829.

An act to amend "An act concerning justices of the peace and constables, approved, February 13, 1827"—approved, January 23, 1829.

An act concerning justices of the peace and constables, and concerning Coles county—approved, January 7, 1831.

An act to amend the acts concerning justices of the peace and constables—approved, March 1, 1833.

An act to extend the jurisdiction of justices of the peace in certain cases—approved, March 2, 1833.

An act to extend the jurisdiction of justices of the peace in certain cases therein named—approved, February 13, 1835.

An act to provide for the election of probate justices of the peace—approved, March 4, 1837.

An act to amend an act entitled an act to amend "An act concerning justices of the peace and constables, approved, February 13, 1827"—approved, January 23, 1829—approved, July 21, 1837.

An act to amend an act to provide for the election of probate justices of the peace, approved, July 21, 1837.

An act concerning occupying claimants of land—approved, February 23, 1819.

An act to enable persons to remove fences made by mistake on the lands of other persons—approved, February 23, 1819.

An act to provide for the collection of demands growing out of contracts for sales of improvements on public lands—approved, February 15, 1831.

An act concerning landlords and tenants—approved, February 13, 1827.

An act to amend an act entitled an act concerning landlords and tenants—became a law, January 4, 1831.

An act to define the extent of possession in cases of settlement on the public lands—approved, February 27, 1837.

An act concerning the revival of statutes—approved, January 19, 1826.

An act authorizing the Governor of this State to transmit the acts of the General Assembly of this State to the executives of the several States and Territories in the United States, and to the department of State of the United States—approved, January 1, 1819.

An act regulating the publication and distribution of the laws and journals of the General Assembly—approved, January 14, 1827.

An act declaring what laws are in force in this State—approved, February 4, 1819.

An act to repeal certain laws—approved, March 30, 1819.

An act declaring what laws of a general nature shall be published with the acts of a general nature of this session—approved, March 2, 1833.

An act relative to printing certain acts, and for other purposes—approved, February 27, 1833.

An act prescribing the manner of authenticating acts of the General Assembly, which may become laws, notwithstanding the objections of the council of revision—approved, December 26, 1826.

An act to authorize the secretary of State to procure the binding of the unbound copies of the laws of Congress, and the several States—approved, February 22, 1833.

An act requiring merchants, auctioneers, peddlers and others engaged in the sale of goods, wares and merchandize, in this State, to procure a license for that purpose, under the penalties therein prescribed—approved, February 16, 1831.

An act to amend an act entitled an act requiring merchants, auctioneers, peddlers and others engaged in the sale of goods, wares and merchandize, in this State, to procure a license for that purpose, under the penalties therein named—approved, March 2, 1833.

An act for the limitation of actions, and for avoiding vexatious law suits—approved, February 10, 1827.

An act to amend “An act for the limitation of actions, and for avoiding vexatious law suits, approved, February 10, 1827”—approved, January 17, 1835.

An act to amend an act entitled “An act for the limitation of actions, and for avoiding vexatious law suits”—approved, February 11, 1837.

An act concerning marks and brands—approved, February 6, 1835.

The fourteenth and fifteenth sections of an act respecting crimes and punishments—approved, March 23, 1819.

An act to regulate proceedings on writs of mandamus—approved, January 6, 1827.

An act concerning marriages—approved, February 14, 1827.

An act for the benefit of mechanics—approved, February 22, 1833.

An act regulating mills and millers—approved, February 9, 1827.

An act concerning minors, orphans and guardians—approved, February 5, 1827.

An act to amend “An act concerning minors, orphans and guardians, approved, February 4, 1827”—approved, February 7, 1831.

An act to amend an act entitled “An act concerning minors, orphans and guardians”—approved, March 4, 1837.

An act for the organization and government of the militia of this State—approved, March 2, 1833.

An act to amend an act entitled “An act for the organization and government of the militia of this State, approved, March 2, 1833”—approved, March 4, 1837.

An act encouraging volunteer companies—approved, March 2, 1837.

An act respecting free negroes, mulattoes, servants and slaves—approved, March 30, 1819.

An act to amend an act entitled “An act respecting free negroes, mulattoes, servants and slaves—approved, January 17, 1829”—approved, February 1, 1831.

An act respecting free negroes, mulattoes, servants and slaves—approved, January 17, 1829.

An act to amend an act entitled “An act respecting free negroes, mulattoes, servants and slaves—approved, March 30, 1819”—approved, March 1, 1833.

An act regulating the issuing of writs of *ne exeat* and injunctions—approved, January 22, 1827.

An act for the appointment of notaries public—approved, December 30, 1828.

An act to amend an act entitled “An act for the appointment of notaries public, approved, February 2, 1819”—approved, January 12, 1833.

An act in addition to the act concerning oaths and affirmations—approved, February 9, 1831.

An act concerning oaths and affirmations—approved, December 26, 1826.

An act concerning partitions and joint rights and obligations—approved, January 13, 1821.

An act regulating the mode of granting license to clock peddlers—in force, January 31, 1835.

An act to regulate the penitentiary—approved, February 19, 1833.

An act to amend an act entitled “An act to regulate the penitentiary, approved, February 19, 1833”—approved, February 9, 1835.

An act to amend the several acts in relation to the penitentiary—approved, January 18, 1836.

An act in relation to the penitentiary—approved, July 21, 1837.

An act requiring persons who petition the General Assembly, to give certain notices, before such petitions are finally acted upon—approved, December 26, 1826.

An act for the relief of the poor—approved, March 1, 1833.

An act to amend an act entitled “An act for the relief of the poor, approved, March 1, 1833”—approved, February 13, 1835.

An act relative to promissory notes, bonds, due-bills and other instruments in writing, and making them assignable—approved, January 3, 1827.

An act regulating the practice in the supreme and circuit courts of this State, and for other purposes—approved, March 22, 1819.

An act concerning practice in courts of law—approved, January 29, 1827.

An act concerning practice—approved, February 2, 1837.

An act to amend an act entitled “An act concerning practice in courts of law, approved, January 29, 1827”—approved, March 1, 1833.

An act simplifying proceedings at law for the collection of debts—approved, February 25, 1833.

An act to amend the practice act of 1827—approved, February 7, 1835.

An act concerning appeals and writs of error—became a law, December 6, 1836.

An act to amend the act entitled “An act concerning practice in courts of law—approved, January, 29, 1827”—approved, July 21, 1837.

An act concerning public arms—approved, March 1, 1833.

An act concerning ancient books, papers and records—approved, January 30, 1821.

An act providing a summary mode to recover public records, papers, and other public property illegally withheld—approved, February 15, 1831.

An act requiring certain official reports to be made to the General Assembly—approved, February 20, 1819.

An act relative to several officers therein named—approved, January 22, 1829.

An act to provide for the preservation of the property of the State—approved, February 15, 1827.

An act concerning public records—approved, February 9, 1835.

An act to provide for transcribing certain records therein named—approved, February 12, 1835.

An act supplemental to an act entitled “An act concerning public records, approved, February 9, 1835”—approved, January 18, 1836.

An act defining the duties of public printer, and fixing the time and manner of performing the same—approved, January 24, 1835.

An act concerning the publication of the laws and journals—approved, January 16, 1836.

An act in relation to the public printer—approved, March 4, 1837.

An act to regulate proceedings upon information in the nature of a quo warranto, approved, December 28, 1826.

An act to regulate the action of replevin—approved, January 29, 1827.

An act relating to the office of recorder—approved, January 8, 1829.

An act to provide for the election of county recorders and surveyors—became a law, February 11, 1835.

- An act supplemental to an act to provide for the election of county recorders and surveyors—approved, February 13, 1835.
- An act concerning religious societies—approved, February 6, 1835.
- An act for the relief of certain persons whose lands have been sold for taxes—approved, February 13, 1827.
- An act to provide for raising a revenue—approved, February 19, 1827.
- An act supplemental to an act entitled an act to provide for raising a revenue—approved, January 19, 1829.
- An act to amend the several revenue laws of this State—approved, February 12, 1831.
- An act concerning the public revenue—approved, February 27, 1833.
- An act in addition to an act, supplemental to an act entitled an act to provide for raising a revenue—approved, February 12, 1835.
- An act concerning the redemption of lands sold for taxes—approved, January 13, 1836.
- An act concerning the public revenue—approved, January 15, 1836.
- An act concerning the surplus revenue—approved, March 4, 1837.
- An act concerning the public revenue of the county of Warren—approved, March 2, 1837.
- An act supplementary to an act to amend an act to provide for raising a revenue—became a law, December 6, 1836.
- An act relative to the duty of county treasurers and sheriffs—approved, July 22, 1837.
- An act authorizing the clerks of the county commissioners' courts to list certain lands—approved, July 21, 1837.
- An act concerning the public revenue—approved, July 21, 1837.
- An act concerning the right of way, and for other purposes—approved, February 28, 1833.
- An act prescribing the mode of trying the right of property—approved, January 29, 1827.
- An act to amend an act regulating the mode of trying the right of property—approved, January 30, 1835.
- An act concerning public roads—became a law, February 12, 1827.
- An act to amend an act to provide for the establishment of ferries, toll-bridges and turnpike roads, approved, February 12, 1827—approved, January 22, 1829.
- An act concerning public roads—approved, February 3, 1835.
- An act declaratory of the law in relation to the road tax—approved, January 16, 1836.
- An act to amend an act concerning public roads—approved, January 18, 1836.
- An act to amend an act entitled an act to amend an act concerning public roads, approved, January 18, 1836—approved, March 3, 1837.
- An act concerning public roads—approved, July 20, 1837.
- An act to provide for inclosing and guarding saltpetre caves in this State—approved, February 6, 1835.
- An act amending the act providing for the establishment of free schools, approved, January 15, 1825, and for other purposes—approved, February 17, 1827.
- An act providing for the establishment of free schools—approved, January 15, 1825.

An act defining and regulating the duties and term of service of the secretary of State—approved, February 14, 1831.

An act to provide for all seals that may be necessary in the several official departments of the State of Illinois—approved, February 19, 1819.

An act to provide for the relief of securities in a summary way in certain cases—approved, March 24, 1819.

An act permanently to locate the seat of government of the State of Illinois—approved, February 25, 1837.

An act supplemental to an act to permanently locate the seat of government of Illinois—approved, March 3, 1837.

An act concerning sheriffs and coroners—approved, February 12, 1827.

An act to amend an act entitled an act concerning sheriffs and coroners, approved, February 12, 1827—approved, February 7, 1831.

An act concerning sheriffs and coroners—approved, January 7, 1831.

An act prescribing the duties of coroners—approved, January 20, 1821.

An act to prohibit shows of wax figures, tricks of jugglers, &c.—approved, January 23, 1829.

An act declaring certain words actionable—approved, December 27, 1822.

An act abolishing the office of State Recorder—approved, January 18, 1833.

An act concerning the payment of money out of the State treasury—approved, February 12, 1833.

An act concerning the State treasurer—approved, January 11, 1831.

An act providing stationery and firewood for the use of the General Assembly—approved, January 6, 1825.

An act to prevent disasters on steamboats navigating the waters within the jurisdiction of Illinois—approved, July 21, 1837.

An act for the protection of stock against castor beans—approved, January 16, 1836.

An act, regulating the appointment and duties of county surveyors—approved, January 14, 1829.

An act directing the mode of bringing suits by or against the State—approved, January 3, 1829.

An act to prevent the selling of spirituous liquors in this State, and for other purposes—approved, February 14, 1823.

An act to license and regulate taverns—approved, February 27, 1819.

An act to amend an act to license and regulate taverns—approved, February 12, 1835.

An act to amend the act to license and regulate taverns—became a law, February 10, 1837.

An act to provide for the recording of town plats—approved, February 27, 1833.

An act to prevent trespassing by cutting timber—approved, February 27, 1819.

An act to amend an act to prevent trespassing by cutting timber, approved, February 27, 1819—approved, February 25, 1833.

An act to provide for changing the venue in civil and criminal cases—approved, January 23, 1827.

An act relative to wills and testaments, executors and administrators, and the settlement of estates—approved, January 23, 1829.

An act to amend an act entitled an act relative to wills and testaments, executors and administrators, and the settlement of estates—approved, February 14, 1831.

An act supplementary to an act entitled an act relative to wills and testaments, executors and administrators, and the settlement of estates—approved, February 25, 1833.

An act supplemental to an act entitled an act relative to wills and testaments, executors and administrators, and the settlement of estates—approved, January 23, 1829—approved, March 1, 1833.

An act supplemental to an act relative to wills and testaments—approved, January 27, 1835.

An act for increasing the penalty of the treasurer's bond—approved, March 1, 1837.

An act to preserve good order in all worshipping congregations and societies in this State—approved, March 1, 1833.

An act concerning the public revenue—approved, February 26, 1839.

An act supplementary to an act concerning the public revenue—approved, March 1, 1839.

An act legalizing process issued by judges and justices of probate—approved, January 7, 1839.

An act to authorize committees of the General Assembly to swear witnesses—approved, January 7, 1839.

An act for the amending the act entitled an act to provide for the election of justices of the peace and constables, approved, 30th December, 1836—approved, January 12, 1839.

An act to amend an act entitled an act to prevent trespasses by cutting timber, approved, 27th of February, 1819—approved, January 12, 1839.

An act to amend an act entitled an act prescribing the mode of proceeding in chancery—approved, January 24, 1839.

An act to amend an act entitled an act concerning judgments and executions, approved, January 17, 1825—approved, February 6, 1839.

An act regulating tavern and grocery licenses—approved, March 2, 1839.

An act supplemental to an act entitled an act to regulate the action of replevin, approved, January 29, 1827—approved, February 12, 1839.

An act to prohibit the circulation of bank notes of a less denomination than five dollars—became a law, December 4, 1838.

An act in relation to garnishees—approved, February 12, 1839.

An act to amend an act concerning justices of the peace and constables—approved, February 3, 1827—approved, February 12, 1839.

An act regulating the salaries of the judges of the supreme court—approved, February 12, 1839.

An act regulating the time of holding the circuit court in the second judicial circuit—approved, February 15, 1839.

An act to amend an act entitled "An act regulating elections, in force, June 1, 1829"—approved, February 15, 1839.

An act to prohibit betting on elections—approved, February 15, 1839.

An act to amend an act concerning the right of way—approved, February 12, 1839.

An act supplemental to the act entitled "An act to define the extent of possession in cases of settlement on the public lands, approved, February 27, 1837—approved, February 16, 1839.

An act to amend an act entitled "An act for the relief of the poor—approved, March 1, 1833"—approved, February 21, 1839.

An act to provide for the appointment of notaries public—approved, February 22, 1839.

An act dividing the State into judicial circuits—approved, February 23, 1839.

An act relating to service of process against corporations—approved, February 19, 1839.

An act to define the manner of proceeding in petitioning the General Assembly for locating or altering State roads—approved, February 27, 1839.

An act to regulate public carriages and the law of the road—approved, February 23, 1839.

An act supplementary to an act prescribing the mode of trying the right of property—approved, February 27, 1839.

An act to amend the act entitled “An act declaring what shall be evidence in certain cases—approved, January 10, 1827”—approved, February 27, 1839.

An act further to provide for the release and extinction of mortgages—approved, February 27, 1839.

An act to amend the act entitled “An act to provide for changing the venue in civil and criminal cases, approved, January 23, 1827”—approved, February 29, 1839.

An act to amend an act regulating the mode of trying the right of property—approved, February 28, 1839.

An act fixing the salary of the Governor, and requiring him to reside at the seat of government—approved, March 1, 1839.

An act to amend the law in relation to sheriffs and coroners—approved, March 1, 1839.

An act defining and regulating proceedings in the action of ejectment—approved, March 2, 1839.

An act to protect the Cumberland road and to prevent trespasses—approved, March 2, 1839.

An act fixing the time of holding the supreme court, and the circuit courts in the first, sixth, seventh, eighth and ninth circuits—approved, March 2, 1839.

An act to provide for the probate of wills in certain cases—approved, March 2, 1839.

An act to quiet possessions and confirm titles to land—approved, March 2, 1839.

An act relating to the duties of county commissioners—approved, March 2, 1839.

An act to amend the several laws in relation to practice in courts of law, and for the benefit of A. McPhail and T. C. Kirkman—approved, March 2, 1839.

An act to amend the act concerning marriages—approved, March 2, 1839.

An act to fix the time of holding courts in the several counties composing the fifth judicial circuit—approved, March 2, 1839.

An act in relation to the penitentiary—approved, March 2, 1839.

An act to amend an act entitled “An act establishing and regulating the inspection of tobacco in this State—approved, January 12, 1829”—approved, March 2, 1839.

An act to change the time of holding courts in the third judicial circuit in this State—approved, March 2, 1839.

An act to amend the several laws, in relation to appeal bonds, and the trial of appeals—approved, March 2, 1839.

An act to amend an act concerning the public revenue, approved, February 26, 1839—approved, February 1, 1840.

An act fixing the time of holding the circuit courts in the eighth judicial circuit, approved, February 1, 1840.

An act concerning attachments—approved, January 31, 1840.

An act to amend an act concerning attachments—approved, February 12, 1833," approved, January 31, 1840.

An act providing for the binding of the laws and journals—approved, January 31, 1840.

An act to amend the law in relation to change of venue—approved, February 1, 1840.

An act to amend an act concerning justices of the peace and constables—approved, February 3, 1827—approved, February 1, 1840.

An act to amend an act regulating the publication and distribution of the laws and journals of the General Assembly—approved, January 29, 1840.

An act in relation to the publication of the reports of the decisions of the supreme court of the State of Illinois—approved, February 1, 1840.

An act concerning sheriffs, coroners, constables, justices of the peace and probate justices of the peace—approved, February 1, 1840.

An act fixing the times of holding courts in the sixth judicial circuit—approved, January 29, 1840.

An act to amend the several laws in relation to appeals—approved, February 3, 1840.

An act regulating the time of holding the court in the counties of Clinton and Bond—approved, February 3, 1840.

An act to provide for securing to mechanics and others, liens, for the value of labor and materials—became a law, December 10, 1839.

An act authorizing administrators to settle estates in particular cases—approved, February 17, 1841.

An act concerning assessors—approved, February 26, 1841.

An act to authorize the appointment of assessors in certain cases—approved, February 27, 1841.

An act further defining the duties of the attorney general and for other purposes, approved, February 26, 1841.

An act creating a board of auditors to settle the accounts of contractors on public works—approved, February 26, 1841.

An act to prevent the unlawful driving away of cattle and other stock, by drovers and others—approved, February 3, 1841.

An act to prevent collectors from speculating in auditor's warrants—approved, February 19, 1841.

An act relating to the recording or registering of conveyances or other instruments in writing, executed out of this State and within the United States—approved, February 26, 1841.

An act concerning county seats and county lines—approved, February 27, 1841.

An act to change the time of holding courts in the second judicial circuit—approved, February 7, 1841.

An act fixing the time of holding courts in the sixth judicial circuit—approved, January 20, 1841.

An act fixing the time of holding the circuit courts in the first judicial circuit—approved, February 3, 1841.

An act to establish circuit courts—approved, February 23, 1841.

An act supplemental to "An act to establish circuit courts, approved, February 23, 1841"—approved, February 26, 1841.

An act to amend an act entitled "An act confirming grants of property, made for the encouragement of education, and for other purposes, approved, February 1, 1831"—approved, February 18, 1841.

An act to amend and explain the election law, approved, January 10, 1821—approved, February 20, 1841.

An act regulating evidence in certain cases—approved, February 17, 1841.

An act to facilitate the collection of judgments by executors and administrators, approved, February 19, 1841.

An act to amend an act concerning judgments and executions, approved, January 17, 1825—approved, February 19, 1841.

An act to exempt certain articles from execution—approved, February 26, 1841.

An act re-organizing the judiciary of Illinois—became a law, February 10, 1841.

An act to amend the several acts in relation to constables—approved, February 26, 1841.

An act to amend an act entitled "An act to regulate tavern and grocery licenses," approved, February 17, 1841.

An act in relation to peddlers—approved, February 27, 1841.

An act supplemental to an act to amend an act entitled "An act to regulate taverns and groceries"—approved, February 18, 1841.

An act to enable purchasers of real estate to ascertain whether the same is free from incumbrances, and to prevent secret liens of attachment and executions—approved, February 26, 1841.

An act in relation to free negroes and mulattoes—approved, February 19, 1841.

An act in relation to paupers—approved, February 21, 1841.

An act to amend "An act simplifying proceedings at law, for the collection of debts—approved, February 25, 1833"—approved, February 23, 1841.

An act supplemental to an act defining the duties of public printer, and fixing the time and manner of performing the same—approved, February 23, 1841.

An act concerning public roads—approved, February 20, 1841.

An act to incorporate academies and seminaries of learning—approved, March 6, 1843.

An act to fix the tenure of certain officers—approved, February 21, 1843.

An act amending the several acts relating to attachments—approved, February 23, 1843.

An act concerning attorneys and counsellors at law—approved, March 4, 1843.

An act to amend an act entitled "An act to consolidate the acts relative to the auditor and treasurer, and the election of attorney general, approved, March 2, 1833"—approved, March 4, 1843.

An act in relation to official bonds—approved, January 28, 1843.

An act to prevent cities or towns from issuing warrants to circulate as money—approved, March 4, 1843.

An act to regulate the fees of the clerks of circuit courts, in case of naturalization of foreigners—approved, February 24, 1843.

An act in relation to clerks of circuit courts—approved, March 6, 1843.

An act to establish seven congressional districts—approved, March 1, 1843.

An act to extend the jurisdiction of the several counties bordering on the Mississippi and Wabash rivers—approved, March 4, 1843.

An act to authorize county commissioners' courts to assess taxes, for road purposes—approved, March 4, 1843.

An act for the regulating of county treasuries and county funds—approved, February 25, 1843.

An act to authorize county commissioners to lease certain rooms—approved, February 21, 1843.

An act in relation to the supreme court—approved, March 3, 1843.

An act supplemental to “An act concerning estrays,” in force, February 9, 1835—approved, March 4, 1843.

An act to amend “An act concerning estrays,” approved February 9, 1835—approved, March 6, 1843.

An act concerning evidence in certain cases—approved, February 24, 1843.

An act to exempt certain articles from execution—approved, March 4, 1843.

An act relating to docket fees—approved, March 4, 1843.

An act to amend “An act to provide for the establishment of ferries, toll bridges and turnpike roads—approved, February 12, 1827—approved, February 1, 1843.

An act for the better security of State, county and township funds—approved, February 28, 1843.

An act to punish the crime of incest—approved, February 7, 1843.

An act to authorize and direct the secretary of State to receive and preserve geological specimens, and for other purposes—approved, March 4, 1843.

An act to repeal an act entitled an act to regulate foreign insurance company agencies established in the State of Illinois, and for other purposes—approved, March 4, 1843.

An act in relation to judgments and executions—approved, February 25, 1843.

An act to allow grand and petit jurors mileage—approved, March 4, 1843.

An act regulating the manner of selecting juries in certain cases—approved, February 1, 1843.

An act in relation to the distribution of the laws and documents of the congress of the United States—approved, February 22, 1843.

An act to amend an act entitled an act providing for the binding of the laws and journals—approved, January 31, 1840—approved, February 23, 1843.

An act to amend an act entitled an act regulating mills and millers—approved, February 7, 1827—approved, March 3, 1843.

An act in relation to the penitentiary—approved, March 2, 1843.

An act relative to probate justices of the peace—approved, February 1, 1843.

An act to amend the several laws in relation to the trial of the right of property before justices of the peace—approved, February 2, 1843.

An act supplemental to the several acts defining the duties of the public printer—approved, March 4, 1843.

An act to authorize the county commissioners' courts to erect fire proof offices for the preservation of county records—approved, February 24, 1843.

An act to establish a mode to register births and deaths—approved, March 3, 1843.

An act for the relief of certain securities therein named—became a law, December 6, 1842.

An act concerning the State library—approved, December 15, 1842.

An act to regulate weights and measures—approved, March 4, 1843.

An act to amend an act relative to wills and testaments, executors and administrators and the settlement of estates—approved, January 23, 1829—approved, March 6, 1843.

An act authorizing counties to give a bounty on wolf scalps—approved, February 15, 1843.

SEC. 3. The following acts and parts of acts passed at the present session, the provisions thereof having been incorporated in and made part of the several chapters composing the Revised Statutes, are hereby repealed, subject to the restrictions, limitations and provisions in this chapter contained, that is to say :

An act to regulate mortgages on personal property—approved, January 17, 1845.

An act to amend an act for the speedy assignment of dower and partition of real estate—approved, February 6, 1827—approved, January 21, 1845.

An act to amend an act directing the mode of electing electors of President and Vice President of the United States—approved, January 11, 1827—approved, January 21, 1845.

An act to amend an act entitled an act relative to criminal jurisprudence—approved, February 26, 1833—became a law, December 2, 1844.

An act to amend an act exempting certain articles from execution—approved, January 23, 1845.

An act requiring county orders to be countersigned by county treasurers—approved, January 23, 1845.

SEC. 4. In addition to the several acts hereinbefore enumerated, all acts and parts of acts, passed previous to the present session of the General Assembly, the subjects whereof are revised and re-enacted in the Revised Statutes, as well as all other acts and parts of acts, the provisions of which are repugnant to the provisions therein contained, are hereby repealed ; subject, however, to the provisions, limitations and restrictions in this chapter contained.

SEC. 5. All laws of a general and public nature passed at the present session of the General Assembly, the subjects whereof are not revised nor incorporated in the several chapters composing the Revised Statutes, shall be published and bound in the volume of Revised Statutes.

SEC. 6. Such acts and parts of acts of a general and public nature, passed previous to the present session of the General Assembly, as are neither repealed nor incorporated and made part of the Revised Statutes, and which are necessary to preserve the meaning of, and perfect the laws enacted, shall be published and bound in the volume of Revised Statutes.

SEC. 7. There shall be published in the manner hereinafter provided, an edition of ten thousand copies of the Revised Statutes.

SEC. 8. The declaration of independence—the articles of confederation—the constitution of the United States, with its amendments—the constitution of this State—the ordinance of July 13, 1787—the ordinance of the convention of this State, adopted, August 26, 1818, shall be published with the Revised Statutes.

SEC. 9. The chapters composing the Revised Statutes, shall be published in numerical order, alphabetically arranged, under proper heads and titles, with complete and full index to the whole ; and at the head of each chapter, there shall be brief notes of the contents of each clause or section in numerical order.

SEC. 10. The person heretofore appointed to revise the laws of this State is hereby appointed and required to superintend the publication of the Revised Statutes, arrange the order of publication, prepare the notes and index, examine and correct the proof sheets, and cause all clerical and typographical errors to be corrected, so far as he may discover the same.

SEC. 11. The edition of the Revised Statutes, hereby authorized to be published, shall be printed on paper equal in quality to that used in the fourth volume of Scammon's reports ; on new type of size and quality to be approved by the super-

intendent, and shall be published in one volume of royal octavo size, bound in full law binding, equal in style, finish and durability to the binding of the fourth volume of Scammon's reports, and appropriately lettered on the back in gilt lettering, "REVISED STATUTES," "ILLINOIS," "1845."

SEC. 12. It shall be the duty of the superintendent to contract for the paper to be used in printing the Revised Statutes, of the quality in the preceding section specified, and at the lowest possible price; and on the delivery of such paper, he shall present his certificate, approved by the Governor, to the auditor, who shall thereupon issue his warrant upon the treasurer, in favor of the proper person, for the amount.

SEC. 13. In preparing the work for publication, errors which may have occurred in the numbering of the several chapters and sections, or in reference thereto, and which remain in the enrolled chapters, may be corrected and the proper numbers and references inserted; and words inserted or omitted by clerical mistake, may be omitted or supplied without brackets.

SEC. 14. It shall be the duty of the secretary of State, to cause to be copied, the several chapters composing the Revised Statutes, and all other laws passed at the present session of the General Assembly, which are required to be published with the Revised Statutes, and to furnish the same to the superintendent in such order and at such times as he may require.

SEC. 15. It shall be the duty of the superintendent, to furnish the public printer, within ten days after the adjournment of the General Assembly, with copy sufficient for the commencement of the work, and continue to furnish such copy as rapidly as the same shall be needed.

SEC. 16. The public printer shall, immediately on the receipt of such copy, proceed with the work, and as the forms are printed, deliver the sheets well pressed and in good order to the binder—the printing to be completed and the whole delivered to the binder before the first day of July next: *Provided*, That if there be delay in procuring the paper for said work, the time fixed for the completion of the printing, may be extended, not to exceed twenty days.

SEC. 17. The binder shall bind the volumes as by law required, and deliver to the secretary of State, within twenty days after the sheets of the last form are delivered to him, one thousand copies; within twenty days thereafter, one thousand copies; by the tenth of September next, two thousand copies; and the balance by the twenty-fifth day of December next: *Provided*, That if the printer shall fail to deliver the last form of printed sheets, at the time and in the manner required, the binder shall have additional time, equal to the time so lost, in which to deliver the work to the secretary of State.

SEC. 18. For any delay or failure on the part of the printer or binder, they shall be subject to the provisions and forfeitures prescribed in chapter eighty-four of the revised statutes.

SEC. 19. The copies of the Revised Statutes and of the laws passed at the present session of the General Assembly, which are required to be furnished by the secretary of State to the superintendent, shall be certified by the secretary of State to be true copies of the originals; and the certificate of the superintendent, that the printed chapters and acts contained in the volume of Revised Statutes are correctly published from such certified copies, with the exception of such corrections of clerical errors and mistakes, as are authorized in this chapter to be made, shall be

deemed in all courts and places a sufficient authentication of the several chapters and acts contained in the work so published.

SEC. 20. When the printer and binder shall have completed their respective portions of the work according to law, their accounts therefor shall be audited and paid as in other cases.

SEC. 21. The Revised Statutes shall be distributed to the officers and persons, entitled thereto, in the same manner as is provided by law for the distribution of the ordinary laws of the General Assembly.

SEC. 22. Whenever the provisions of any law passed at the present session and published with the chapters composing the Revised Statutes, without being incorporated in the same, shall contravene, or be inconsistent with the provisions of such chapters, the provisions of such law shall prevail.

SEC. 23. If the provisions of different chapters of the Revised Statutes conflict with, or contravene each other, the provisions of each chapter shall prevail as to all matters and questions growing out of the subject matter of such chapter.

SEC. 24. If conflicting provisions be found in different sections of the same chapter, the provisions of the section which is last in numerical order, shall prevail, unless such construction be inconsistent with the meaning of such chapter.

SEC. 25. The term "court" as used in the Revised Statutes, shall, in all necessary cases, be deemed to refer as well to probate justices of the peace, justices of the peace, and tribunals established by law in cities or incorporated towns, as to courts of record.

SEC. 26. No act, or part of an act, repealed by another act of the General Assembly, shall be deemed to be revived by the repeal of such repealing act.

SEC. 27. Whenever in the Revised Statutes or any other statute, words importing the singular number only, are used, such words shall be deemed to extend to several persons, matters or things, and words importing the plural number only, such words, shall in like manner be deemed to extend to one person, matter or thing, as well as to several persons, matters or things.

SEC. 28. When any party or person is described or referred to by words importing the masculine gender, females as well as males shall be deemed to be included.

SEC. 29. The word "person" or "persons," as well as all words referring to, or importing persons, shall be deemed to extend to and include bodies politic and corporate, as well as individuals.

SEC. 30. Whenever the term "heretofore," occurs in any chapter or statute, it shall be construed to mean any time previous to the day on which such chapter or statute takes effect, and the term "hereafter" shall be construed to mean the time after the chapter or statute containing such term shall take effect.

SEC. 31. The word "insane person," or the word "insane" shall be construed to include every idiot, non-compos, lunatic or distracted person.

SEC. 32. The word "month" shall be construed to mean a calender month, and the word "year" a calender year unless otherwise expressed.

SEC. 33. The word "oath" shall be deemed to include an affirmation, and the word "sworn" shall be construed to include the word "affirmed."

SEC. 34. The word "State" when applied to different parts of the United States, may be construed to include the District of Columbia, and the several territories; and the words "United States," may be construed to include the said District and territories.

SEC. 35. The term "laws now in force," whenever it occurs in the Revised Statutes, shall be construed to mean, the statutes and laws in force immediately previous to the final passage of the chapter containing such term.

SEC. 36. The rules of construction prescribed in the preceding sections, shall apply in all cases, unless it be otherwise specially provided, or unless there be something in the subject or context repugnant to such construction; and all general provisions, terms, phrases and expressions used in any statute, shall be liberally construed, in order that the true intent and meaning of the General Assembly may be fully carried out.

SEC. 37. The Revised Statutes shall take effect and go into operation as laws, on the tenth day of September next, and not before; and all acts and parts of acts, consolidated or included in the Revised Statutes or therein repealed, shall continue and be in full force and effect until said day, as fully and completely as though the Revised Statutes had not passed: *Provided*, That the provisions of this section shall not extend to or suspend the operation of section one, sections from five to twenty inclusive, sections thirty-five and forty of this chapter, but such sections shall take effect from and after the adjournment of the General Assembly.

SEC. 38. The repeal of any act or acts by the provisions of this chapter, shall not affect any act or thing done, nor any right accruing, accrued or established, or any suit or proceeding had in any civil case, prior to the time when the Revised Statutes shall go into effect; but the proceedings in every case, when necessary, shall be conformed to the Revised Statutes.

SEC. 39. No crime or offence committed, and no penalty or forfeiture incurred, previous to the time when such repeal shall take effect, shall be affected by such repeal; except that when any punishment, penalty or forfeiture shall have been mitigated by the provisions of the Revised Statutes, such provisions may be extended to and applied to any judgment to be pronounced after such repeal.

SEC. 40. No suit, or prosecution pending at the time of such repeal, for any offence committed, or for the recovery of any penalty or forfeiture incurred under any of the acts in this chapter repealed, shall be affected by such repeal, except that the proceedings in such suit or prosecution shall be conformed, when necessary, to the Revised Statutes.

SEC. 41. No law heretofore existing, and herein repealed, which provided for the limitation of actions and the prevention of vexatious suits; or for the barring of any right, remedy, suit, plaint, prosecution, recovery, redemption or other proceeding; or for the discharge of any penalty or forfeiture; or for the confirming of any rights to real estate or any interest thereon, or to any other property, matter, thing or right of action, by reason of the lapse of a time certain, in any such law expressed, shall be so construed as to hinder or obstruct the operation of such law in any case in which the same has begun to operate, but for the purpose of saving and continuing all rights and remedies, forfeitures and disabilities, the term of which has commenced to run, such laws shall be deemed in full force until the expiration of the time in such law limited.

SEC. 42. The following acts, passed at the present session of the General Assembly, shall be published as chapters of the Revised Statutes, under their appropriate titles, omitting the enacting clause, title and signatures of the speakers of the two Houses, but retaining the date of their approval.

An act to establish and maintain common schools—approved, February 26, 1845.
 An act regulating the assessment and collection of the public revenue—approved,
 March 3, 1845.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Acts Nos. 21 and 29.]

CHAPTER XCI.

RIGHT OF PROPERTY.

SECTION

1. When trial of right of property is demanded, sheriff, how to proceed.
2. Sheriff to notify parties, to swear jury and witnesses.
3. Duty of sheriff to subpoena witnesses.
4. May compel attendance of witnesses.
5. Fines for non-attendance, how collected.
6. Proceedings after verdict of jury.
7. Costs, how collected.
8. Appeals to the circuit court allowed; bond to be given; costs to be paid; trial of appeal.
9. When property is taken on execution issued by justice of the peace, how parties may be notified, &c.

SECTION

10. Trial of right of property, how conducted; examination; judgment for costs; appeals allowed.
11. Duty of justice of the peace to try the right of property, when applied to.
12. Defendant in execution not to be a witness; when appeal must be demanded; writ of *certiorari*, when allowable; appeal to be *superse-deas* and stay proceedings.
13. If plaintiff be non-resident, need not be notified; when bound for costs.
14. Verdict shall be authority to officer to retain property.
15. Number of jurors, how regulated.

SECTION 1. Whenever an execution or writ of attachment shall be levied by any sheriff or coroner upon any personal property, and such property shall be claimed by any person or persons, other than the defendant in such execution or attachment, by giving to the sheriff or coroner, notice in writing, of his, her or their claim and intention to prosecute the same, it shall be the duty of such sheriff or coroner, forthwith to summon a jury of twelve respectable householders of the county, to meet at a place to be designated by him, before the day appointed for the sale of such property; and then and there proceed to inquire by the oath of said jury, whether the right of such property be in such claimant or not.

SEC. 2. It shall be the duty of such sheriff or coroner to notify the plaintiff in the execution or attachment of such claim, and the time and place of trial; and on the day appointed, the sheriff or coroner shall swear the jury, and such witnesses as may be produced, by either party, or may postpone the trial such reasonable time, on the application of either party, as he shall think proper, for the purpose of procuring testimony.

SEC. 3. In all cases of the trial of the right of property before any sheriff or coroner, it shall be the duty of such sheriff or coroner to subpoena such witnesses as shall be required by either party to such trial, to attend at the time and place at which such trial shall be held.

SEC. 4. In all cases where a witness shall be so subpoenaed and shall fail to attend at such trial conformably thereto, and in all cases where a juror shall fail to attend the same when subpoenaed by such sheriff or coroner, such sheriff or coro-

ner shall have power to compel their attendance, in the same manner as may be done in the trial of causes before justices of the peace, and in the circuit courts of this State.

SEC. 5. And any fine which such sheriff or coroner may impose for such contempts, may be collected in the manner provided for the collection of costs by the seventh section of this chapter.

SEC. 6. After the jury shall have agreed on their verdict, the sheriff or coroner shall reduce the same to writing, and it shall be signed by all the jurors, and the sheriff or coroner shall thereupon restore the property, if found to belong to the person or persons claiming, or shall proceed on such execution or attachment, if the property shall not be found to be in the claimant, in the same manner as if no claim had been made.

SEC. 7. The sheriff or coroner shall make up a bill of all the costs accruing on such trial, according to the provisions of law, regulating the fees of officers for similar services, and annex the same to the verdict of the jury; and shall have power to collect the same from the claimant of such property, if the verdict be against him, or from the plaintiff or plaintiffs in the execution, if such verdict be for the claimant, in the same manner that bills of fees in other cases are authorized by law to be collected.

SEC. 8. In case either party shall think himself or herself aggrieved by the verdict of the jury, he or she may appeal to the circuit court, in which case the party appealing shall give bond, with sufficient security, to prosecute such appeal without delay, and to pay all costs that have accrued or may accrue on such appeal, if judgment be given against him, in the circuit court; which bond shall be in a sum sufficient to cover all costs, and be payable to the opposite party; and the sheriff or coroner shall thereupon deliver to the clerk of the circuit court, the bond aforesaid, and all the papers relating to such trial, and the clerk shall enter said appeal on his docket, and the court shall proceed to try the right to such property, in the same manner as is before directed in this chapter: and in all such cases, judgment shall be given against the party failing, for all costs, and the clerk shall issue execution for the same.

SEC. 9. In all cases where any personal property shall be taken by virtue of an execution or attachment, issued by any justice of the peace, which shall be claimed by any person or persons other than the defendant in such execution or attachment; and such claimant shall give notice in writing of his or their claim and intention to prosecute the same, it shall be the duty of the constable to notify the plaintiff in execution or attachment of such claim, and the time and place of trial; and if the justice who issued such execution or attachment reside in another county, be absent from the county, or unable to attend to such trial, it shall be the duty of the constable serving such execution or attachment, to notify the plaintiff in execution that he will attend before some other justice of the peace of the county, (naming him,) and shall also designate some day and hour for the trial of the right of said property, of which time and place, the claimant shall also have notice.

SEC. 10. The same proceedings shall be had before the constable serving such execution or attachment, together with the justice before whom the trial of the right of property may be had, as are in this chapter provided for the trial of the right of property before sheriffs and coroners; but the justice shall issue all process necessary in such trials. He shall also administer the oaths to the jury and witnesses, and retain the papers relating to the proceedings; and in case the pro-

erty shall appear to belong to the claimant, the justice shall enter judgment against the plaintiff in execution or attachment, for the costs that may have accrued on such suit; and on failure of the plaintiff to pay the same, the justice may issue execution therefor; but in all cases where it shall appear that the property claimed belongs to the defendant in execution, the justice shall enter judgment against the claimant of the property for the amount of costs that shall have accrued, and issue execution therefor as in other cases; and in case of an appeal, shall take the bond and transmit the same, with the other papers, to the clerk as aforesaid.

SEC. 11. It shall be the duty of any justice of the peace, other than the one issuing the execution or attachment under which a levy has been made, when notified by any constable, of any person or persons claiming property levied upon as hereinbefore provided, to enter such case on his docket, and to proceed in all cases, to have the right of such property tried as if the execution had been issued by him.

SEC. 12. In no case of the trial of the right of property under this chapter, shall the defendant in execution be a competent witness, and all appeals from the judgments on the trial of the right of property, shall be demanded on the day of such trial, and bond entered into before the clerk of the circuit court within five days from such trial; and in all cases of the trial of the right of property before a justice of the peace, either party may take the case into the circuit court by writ of certiorari, as in other trials before justices of the peace: *Provided*, That in all cases of said appeals, the praying thereof shall be a supersedeas, and stay all further proceedings until the expiration of five days.

SEC. 13. In all cases when the plaintiff in the execution neither resides in the county where judgment was rendered, nor in the county in which such trial of the right of property is had, it shall not be necessary for the constable to give said plaintiff notice; but the trial shall be conducted in the same manner as if actual notice had been given; and in case the property shall be found to be the property of the claimant, the plaintiff in the execution shall be bound for all costs that may have accrued.

SEC. 14. The verdict of the jury in all cases under this chapter, shall be a complete indemnity to the sheriff or other officer, in proceeding to sell or restore any such property according to the verdict; and in case of an appeal, the sheriff or other officer shall retain such property, unless the party claiming, or the defendant in the execution shall enter into a bond with sufficient security, for the delivery of such property to the sheriff or other officer, if the judgment of the court shall be against the claimant.

SEC. 15. In trials of the right of property taken on execution, attachment or other process, by constables, the number of jurors shall be six instead of twelve, unless all the parties to the trial shall agree upon a larger number, not exceeding twelve; in which case, the number agreed on shall constitute the jury: *Provided*, That either party shall have the right to require twelve jurors, upon advancing the additional costs and fees accruing in consequence of increasing the number over six; such additional costs and fees not being in any event chargeable against the other party.

APPROVED: March 3, 1845.

CHAPTER XCII.

RIGHT OF WAY.

SECTION

1. Land required for road, canal, &c., to be appraised by commissioners; their report; damages to be paid before land is taken.
2. Damages, when payable out of State treasury; when out of county treasury.
3. Materials, when wanted for public work, how valued, paid for and taken.

SECTION

4. Appeals may be taken from proceedings.
5. Pulling down fence, &c., placed to protect road, penalty for; proviso as to United States' mail.
6. Appeals allowed from assessments of damages by opening lanes, alleys, streets, &c.; as from decisions of justices of the peace.

SECTION 1. In all cases where a public road, canal or other public work shall have been heretofore authorized, or which shall hereafter be authorized by law, to be laid out or constructed in this State, either by the authority of the United States or this State, and the same is required to pass over the land belonging to any company, corporation or individual, and the owner or owners shall object thereto, and cannot agree with the commissioner, superintendent or other person or persons authorized to lay or construct the same, on the amount of damages which such owner or owners may claim, it shall be lawful for such commissioner, superintendent or other authorized person or persons, to apply to some justice of the peace of the county where the same may occur, who shall cause three householders to appear before him; and the householders so summoned, after being sworn, faithfully and impartially to examine the ground which shall be pointed out to them by the commissioner, superintendent or other authorized person or persons, shall assess the damages which they shall believe such owner or owners will sustain, over and above the additional value which such land will derive from the construction of such road, canal or other public work, and make two written reports, signed by at least a majority of them, one of which they shall deliver to the commissioner, superintendent or other persons requesting the view, and the other to the justice of the peace; after which, it shall be lawful for the road, canal or other public work, to pass over the land of such company, corporation, individual or persons, doing as little damage as the nature of the case will permit: *Provided*, That the amount of the damages so assessed, and the costs of the view be first paid, either to the claimant or claimants, or to the justice of the peace, to whom the application and return shall have been made.

SEC. 2. If the damages assessed, are authorized by law to be paid out of the treasury, it shall be the duty of the commissioner, superintendent or other authorized person or persons having charge of such work, to transmit to the auditor of public accounts, a copy of the assessment made by the householders, together with a statement of the costs of the view; and it shall be the duty of the auditor to issue his warrant upon the treasury for the payment of the amount. And if the damages are authorized to be paid out of the county treasury, the person or persons having charge of such work, shall transmit to the county commissioners' court, a copy of the assessment made by the householders, with a statement of the costs of the view, and if approved by the court, they shall order the same to be paid out of the county

treasury: *Provided, however,* In all cases arising under the provisions of this chapter, the costs of the view of the householders shall be paid by the applicant requesting the same: *Provided, also,* That nothing in this chapter, or in the several chapters relating to State roads, shall be so construed as to authorize the payment of any such damages out of the State treasury; and in no case shall any money be paid out of the State treasury for any damages as aforesaid, without a special provision of law for such purpose.

SEC. 3. Whenever it shall be deemed necessary, for the construction of any road, canal or other public work, to procure from the land of any company, corporation or individual, timber, stone or sand, and such company, corporation or individual shall object thereto, and in case the person authorized to construct such work, shall not agree with the owner of the land, on the price, it shall be lawful for such person authorized to construct such work, to apply to a justice of the peace of the county, who shall cause three householders of the neighborhood to be summoned and sworn, as provided in the first section of this chapter; and it shall be the duty of the three householders to go on the ground and assess the damages which they shall believe the owner will sustain, and make two written reports thereof, signed by at least a majority of them, stating the quantity and description of the articles and value thereof, and give one copy thereof to the applicant for the view, and the other they shall return to the justice of the peace; after which assessment and report, and payment of the amount to the claimant or justice, with the costs of view, it shall be lawful to take the materials so required, from the land of the owner, doing as little damage as possible to the owner of the land.

SEC. 4. In all cases arising under the provisions of this chapter, if the householders shall report it to be their opinion that no damages would be sustained by the owner of the land for the passage of any such road, canal or other public work, over and above the advantages which such land would derive from its construction, nothing more shall be paid than the costs of the view; and in all cases arising under this chapter, either party may appeal to the circuit court of the county, within the same time, and under the same rules and regulations, as are or shall be prescribed by law for taking appeals from the judgments of justices of the peace; and the circuit court shall proceed upon such appeal, as in other cases of appeals from the judgment of justices of the peace, and render such judgment therein as shall be consistent with law and justice.

SEC. 5. Any person who shall remove or pull down any part of any fence, barricade or wooden structure, placed across any public road, or other public work for the purpose of preventing travel thereon, whilst the same shall be constructing or undergoing repairs under the authority of this State, or of the United States, and thereby the grading, embanking, paving or other work shall be injured or subjected thereto, shall pay to the undertaker of the work, five dollars for each offence, recoverable with costs, before any justice of the peace of the county: *Provided, however,* That no such penalty shall be recoverable, unless it shall be made to appear that the undertaker of the work shall have caused a written or printed notice to all persons, to be affixed in a conspicuous place at such fence, barricade or wooden structure, forbidding the same to be removed or pulled down, or travel on the grading, paving, embankment or other work: *Provided, also,* That if the said works be on any road where the United States' Mail shall at the time be carried, the aforesaid penalty shall not be recoverable against the carrier, should he deem it necessary to expedite him in the passage of the mail.

SEC. 6. In all cases where a jury of freeholders, or other citizens, are or may be appointed, under the authority of any town or city in this State, to inquire into and take into consideration the benefits as well as the injury which may accrue, and estimate and assess the damages which would be sustained, by reason of the opening, extending, or widening of any street, lane, alley or road, the owner or owners of any real estate proposed to be taken for the purpose aforesaid, or any person aggrieved by the apportionment and assessment for the purpose of making payment to the person or persons whose property shall be taken for said purpose, may appeal to the circuit court of the county within the same time and under the same regulations and rules as are or shall be provided by law for taking appeals from the judgment of justices of the peace; and the circuit court shall proceed upon such appeal as in other cases of appeals from the judgment of justices of the peace, and render such judgment therein as shall be consistent with law and justice.

APPROVED: March 3, 1845.

[SEE next Chapter.]

CHAPTER XCIII.

ROADS.

SECTION

1. Carriages meeting to turn to the right.
2. Drunken drivers not to be employed; penalty for employing them in carrying passengers; penalty, how recovered and disposed of.
3. Employer to dismiss drunken driver, penalty for not doing so.
4. Racing, how punished.
5. Driver leaving horses unhitched, how punished.
6. Owners of carriage jointly and severally liable for injuries done by driver; driver, how liable.
7. Carriage, what shall be deemed.
8. This chapter not to interfere with regulations made by cities, &c.; justice's jurisdiction.
9. What roads deemed public highways.
10. County commissioners may lay out, alter and vacate roads.
11. Counties to be divided into road districts, and supervisors appointed therein.
12. Supervisors to be notified of their appointment; to return list of persons liable for road tax; sheriff's return to notice, &c.
13. Fine for refusing to accept office of supervisor.
14. Duties of supervisor to repair roads, keep bridges in repair, erect guide-boards, &c.
15. Supervisor to clear out obstructed roads, repair damaged bridges, &c.; when county to pay cost thereof.
16. Penalty for obstructing roads, damaging bridges, &c.
17. New road, how petitioned for, viewed, and laid out; expense of view, how paid; petitioners for new road, to pay one day's labor thereon.
18. Viewers, how appointed; their duties.
19. Useless road may be vacated, and how; road

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- not to be established or vacated until notice be given.
20. New road, how opened and kept in repair.
 21. Cart roads, how petitioned for, viewed, laid out and established; if road passes through any person's land, and he objects thereto, damages to be ascertained, and be paid in advance.
 22. Day fixed for laboring on roads.
 23. Part of county tax may be designated and set apart for road purposes.
 24. Clerk to make out for supervisor, lists of persons liable to work on road.
 25. Supervisor to call on laborers; their duty; how punished for not laboring, &c.
 26. When road tax payable in labor; when in money.
 27. Supervisor, to sue for road dues; he may be a witness.
 28. Return of labor, when required; dues, how collected; money, how applied; fines, how applied.
 29. Supervisors may hire teams, and purchase material for repairing road.
 30. Jurisdiction of roads given to county commissioners' courts.
 31. Alterations and changes of roads, in what cases, and in what manner made.
 32. Roads on county lines, how laid out.
 33. Plat of survey, &c., of roads laid out, to be filed in office of county commissioners' clerk.
 34. Duty of viewers in locating roads; to be sworn.
 35. Supervisor to make report at March term; power of supervisor; exempt from militia duty.
 36. Compensation of road-viewers, &c.
 37. Supervisor may, in repairing roads, &c., take

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timber, &c.; value thereof, how ascertained; how paid for.

38. General provisions, as to laying out roads, ascertaining damages, making report, &c.; appeals allowed to any injured party.

SECTION

39. Supervisors may bring suits before justices.

40. Penalty, if supervisor neglect duty.

41. Clerk to furnish grand jury with list of supervisors.

42. Compensation of sheriffs and clerks.

SECTION 1. Whenever any persons traveling with any carriages, shall meet on any turnpike road or public highway in this State, the persons so meeting, shall seasonably turn their carriages to the right of the centre of the road, so as to permit each carriage to pass without interfering or interrupting, under the penalty of five dollars for every neglect or offence, to be recovered by the party injured: *Provided*, This section shall not be construed to apply to any case, unless some injury to persons or property shall occur by the driver of the carriage or wagon refusing to turn to the right of the beaten track; nor shall it be construed to extend to a case where it is impracticable, from the nature of the ground, for the driver of the carriage or wagon to turn to the right of the beaten track.

SEC. 2. No person owning any carriage, running or traveling upon any road in this State, for the conveyance of passengers, shall employ or continue in employment, any person to drive such carriage, who is addicted to drunkenness or the excessive use of spirituous liquors; and if any such owner shall violate the provisions of this section, after he shall have had notice and reasonable proof that such driver is addicted to drunkenness, he shall forfeit at the rate of five dollars per day, for all the time during which he shall thereafter have kept any such driver in his employment, to be sued for by any person, and collected in any court having competent jurisdiction. The penalty, when recovered, shall be for the use of the poor of such county, except that the court in which the recovery shall be had, may allow a portion of said penalty, not exceeding twenty-five dollars, to be retained by such complainant as a compensation for his services and expenses.

SEC. 3. If any driver, whilst actually employed in driving any such carriage, shall be guilty of intoxication to such a degree as to endanger the safety of the passengers in the carriage, it shall be the duty of the owner of such carriage, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith to discharge such driver from his employment; and every such owner who shall retain or have in his employ, within three months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day for the time during which he shall keep any such driver in his employment after receiving such notice, to be sued for and applied as directed in the last preceding section.

SEC. 4. No person driving any carriage upon any turnpike road or public highway within this State, with or without passengers therein, shall run his horses or carriage, or permit the same to run, upon any occasion, or for any purpose whatever; and every person who shall offend against the provisions of this section, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined, not exceeding one hundred dollars, or imprisoned, not exceeding sixty days, at the discretion of the court.

SEC. 5. It shall not be lawful for the driver of any carriage used for the purpose of conveying passengers for hire, to leave the horses attached thereto, while passengers remain therein, without first making such horses fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other person, so as to prevent their running; and if any such driver shall offend against the provis-

ions of this section, he shall forfeit for the use of the poor, the sum of twenty dollars, to be recovered by action to be commenced within six months; and unless the amount of such recovery be paid forthwith, execution shall be immediately issued therefor.

SEC. 6. The owners of every carriage running upon any turnpike road or public highway for the conveyance of passengers, shall be liable jointly and severally, to the party injured, in all cases, for all injuries and damages done by any person in the employment of such owners as a driver, while driving such carriage, to any person, or to the property of any person; and that, whenever the act occasioning such injury or damage be wilful, negligent or otherwise, in the same manner as such driver would be liable. Any driver of any mail stage coach, or any other vehicle for the conveyance of passengers, wilfully offending against the provisions of this chapter, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be imprisoned, not exceeding four months, or fined, not exceeding three hundred dollars.

SEC. 7. The term "carriage," as used in this chapter, shall be construed to include stage coaches, wagons, carts, sleighs, sleds, and every other carriage or vehicle used for the transportation of passengers and goods, or either of them.

SEC. 8. Nothing contained in this chapter shall interfere with, or affect any law concerning hackney coaches or carriages in any of the cities of this State, nor interfere with, nor affect the laws or ordinances of any such city for the licensing or regulating such coaches or carriages. Justices of the peace shall have jurisdiction in all cases arising under this chapter, where the penalty does not exceed one hundred dollars.

SEC. 9. All roads within this State, which have been laid out in pursuance of any law of this State, or of the late territory of Illinois, and which have not been vacated in pursuance of law, are hereby declared to be public highways.

SEC. 10. The county commissioners' courts of the several counties in this State, shall have, and are hereby vested with general superintendence over the public roads within their respective counties; and are hereby authorized to cause new roads to be located and made, and to alter or vacate public roads within their respective counties, in the manner hereinafter provided and pointed out.

SEC. 11. The county commissioners' court of each county shall, at their March term, or as soon thereafter as may be, in each and every year, lay out and divide their respective counties into such road districts as they shall deem convenient and proper, defining accurately, the boundaries of said districts; and they shall appoint one supervisor in each district, who shall serve one year, and continue in office until a successor shall be appointed.

SEC. 12. It shall be the duty of the clerk of the county commissioners' court in each county, to make out and deliver to the sheriff, written notices to all the supervisors as aforesaid, within ten days after such appointment has been made, informing them of their said appointment, and describing the bounds of their respective districts, and the roads therein; and the said sheriff shall immediately deliver the said notices to the persons to whom the same shall be directed, respectively; and if any supervisor shall refuse to accept his said appointment, the sheriff shall return the said notice to the clerk who issued the same, noting such refusal on the back thereof. But if the said supervisor shall agree to accept the same, such supervisor shall, within fifteen days thereafter, return to the clerk of the county commissioners' court, a list of the names of all persons residing within his road district,

liable to be taxed for road purposes ; and the said sheriff shall notify the said clerk of such acceptance ; and the said sheriff shall, in all cases, make return of acceptance or refusal within twenty days after the delivery to him of the notice aforesaid. For any failure on the part of the clerk to make out and deliver to the sheriff any one of the notices required by this section, he shall be fined in the sum of ten dollars ; and the sheriff shall incur the same penalty for a failure to deliver any one of said notices in the manner and within the periods herein prescribed : *Provided*, That supervisors shall not be required to make such return, unless the county commissioners' courts shall have levied a tax, according to the provisions of this chapter.

SEC. 13. When any person shall refuse to accept the appointment of supervisor, he shall be fined five dollars, to be appropriated to road purposes : *Provided*, That the commissioners' court may excuse any supervisor from the payment of said fine, upon being satisfied that such person ought not to have been appointed. The commissioners' court shall have power, at any time, to remove from office any supervisor who shall fail or refuse to perform his duty ; and all vacancies shall be filled at the term of the court at which any removal shall be made or vacancy occur.

SEC. 14. It shall be the duty of each supervisor to cause all the public roads within his district to be kept well cleared, smooth, and in good repair—causing all stumps to be cut low, so as to afford at all times a free and safe passage to wagons and other carriages along such roads ; to cause bridges and causeways to be made wherever the same shall be necessary, and to keep the same in repair ; and to cause to be erected and kept in repair, at the forks or crossing place of every public road, a post and guide-boards, with plain inscriptions thereon, in letters and figures, giving the direction and distance to the most noted places to which said roads may lead.

SEC. 15. Whenever any public road shall be obstructed by fallen timber, or in any other manner, and when any bridge or causeway shall be destroyed, or become impassable or dangerous to travelers, it shall be the duty of the supervisor to cause such obstruction to be removed, and to have such bridges or causeways rebuilt or repaired ; and for that purpose he shall call out the persons bound to labor on the road in his district, or as many of them as may be necessary ; but if the persons bound to perform such labor in his district, shall have previously performed the number of days required by this chapter, or if the labor due from such persons shall not be sufficient, he shall then proceed to hire as many laborers or teams as may be necessary to remove such obstruction or repair such damages : *Provided*, The cost shall not exceed ten dollars ; and if the cost of such work shall be estimated by said supervisor to exceed ten dollars, then he shall report such obstruction or damage to any two or more of the county commissioners, whose duty it shall be, immediately, to cause such obstruction to be removed, or such bridge or causeway to be rebuilt or repaired as the case may be, either by ordering the supervisor to hire laborers and teams for that purpose, or by making a contract with some fit person or persons, as they may deem best ; and all moneys required to carry any of the provisions of this section into effect, shall be paid out of the county treasury, on the order of the county commissioners' court.

SEC. 16. If any person shall obstruct any public road, by falling a tree or trees across the same, by encroaching upon or fencing up the same, or by placing any other obstruction therein, he shall forfeit, for any such offence, a sum, not exceeding ten dollars, and a sum, not exceeding three dollars for every day he shall suffer such obstruction to remain, after he shall have been ordered to remove the same by any

supervisor, county commissioner or justice of the peace; and if any person shall purposely destroy or injure any bridge or causeway, or remove any of the timber or plank thereof, or destroy or deface any guide-board, post or mile-stone, on a public road, or dig any drain or ditch across a public road, such person, so offending, shall be indicted, or sued before a justice of the peace, and on conviction, shall be fined in any sum, not less than five dollars, nor more than one hundred dollars, except bridges, which shall be double the value thereof; and for burning a bridge, to be punished agreeable to the criminal code: *Provided, however,* That this section shall not be construed to extend to any person who shall lawfully cut down any timber for rails, fire wood, or other purposes, and who shall immediately remove the same out of the road; nor to any person through whose land a road shall run, who shall dig a ditch or drain across such road, and shall keep the same in good repair.

SEC. 17. No new road shall be opened by order of the county commissioners' court, unless the same shall be applied for by at least thirty-five voters, residing within five miles of the road proposed to be laid out or altered, except in counties which shall not have more than three hundred voters, when only fifteen shall be required. Such applicants shall deposit in the hands of the clerk of the county commissioners' court, a sufficient sum of money to pay the viewing. If their report be in favor of establishing the road, the money so deposited, shall be returned to the persons who deposited the same; but if the report be unfavorable, the expenses of the view shall be paid out of the money so deposited; and every person applying for such new road, shall contribute one day's labor, in addition to the number of days required by this chapter, towards making such road. The clerk of the county commissioners' court shall furnish each supervisor through whose road district such new road shall pass, with a list of the persons who petitioned for the same; and any such petitioners who shall not reside within some district through which such new road shall pass, shall be required to perform the day's labor herein required of him, under the direction of the supervisor of the nearest road district; and for failing to do so, after being duly notified, he shall be fined in the sum of one dollar.

SEC. 18. When a new road shall be applied for, as aforesaid, the county commissioners' court shall, if in their opinion the public good and convenience require it, appoint three suitable persons to view the ground proposed for the same; and if, after such view, the viewers shall believe the road applied for to be necessary, taking into consideration the expense of constructing the same, and its utility to the public, they shall proceed to locate and establish the same, on the nearest and most eligible route from point to point given, having due regard to private property; causing the same to be surveyed, designating its course through prairies and improved land, by fixing stakes in the ground, or by ploughing two furrows, at the distance apart of the full width of the road, and through the timbered land by marking the trees; and shall make report thereof to the next county commissioners' court; but after the view, if they deem such road unnecessary or improper to be made, they shall report their opinion to that effect to the next term of said court.

SEC. 19. Whenever it shall be represented to the county commissioners' court, by a petition of thirty-five voters, that a public road established by said court, or any part thereof, is useless or burthensome, the said court, upon a sufficient sum of money being deposited with the clerk to pay the expenses of a review, (such money to be returned, if the road shall be declared useless,) shall appoint three

suitable persons to view the same, who shall report to the said court at the next term after such appointment, whether such road be useless and burthensome, together with their reasons for such opinion; and the county commissioners may then order such road to be vacated, if, in their opinion and discretion, they shall deem such order proper: *Provided*, That no petition praying for the establishment or vacation of a public road shall be received by the said court, unless the said petitioners or some of them, shall have given twenty days' public notice of such application, by a written notice, posted up in the most public place in each road district through which the road or proposed road shall pass, and a like notice, particularizing the route and important points, on the door of the court house, and of the county clerk's office, should it be kept in a separate building.

SEC. 20. Whenever a new road shall be located, the county commissioners shall immediately cause the supervisors of each district through which such road shall pass, to be notified of such location; and it shall be the duty of the said supervisors to make such roads within their respective districts, and keep the same in repair, so far as the labor of the persons bound to work on said road shall enable him; and if such labor be insufficient, the county commissioners shall cause the same to be cut out and opened at the expense of the county, whenever, in their opinion, the funds of the county will justify such expense; and after being so opened, the same shall be kept in repair by the supervisor, as in other cases.

SEC. 21. Any person or persons desirous of having a cart road laid out, for his or their convenience, from the dwelling or plantation of such person or persons to any public road, or from one public road to another, or from one lot of land to another, shall present a petition to the county commissioners' court of the proper county, setting forth the reasons for desiring such road, and describing the points from and to which said road or cart-way is desired to pass; and the court shall, upon a sufficient sum of money being deposited to pay for viewing such road, appoint three freeholders to view the same: *Provided*, That twenty days' notice shall be given of the intention to present such petition, to each person residing in the county through whose land such cart-way is desired to pass; and also, by posting up a notice thereof on the door of the court house, and clerk's office of the county, if not kept in the court house, for the same period of twenty days; and the viewers, when appointed, shall examine the route proposed for such road, and shall examine any other route which they may deem proper: and if they shall be of opinion that a cart-way is necessary and proper, from and to the points named in the petition, they shall lay out the same in such manner as to produce the least inconvenience to the parties through whose land the same shall pass, and shall make a written report to the court, describing the route of the road, and the numbers of the lots of land through which the same shall pass, and naming the owners thereof, if known; which report shall be examined by the court, and on hearing the objections, if any, and if the court shall be of opinion that the road is necessary and right, an order shall be made establishing the same, not exceeding thirty feet wide: *Provided*, That no such road shall be allowed to pass through any orchard, garden, door or barn-yard: *And Provided, also*, That if any owner of land shall object to the opening such road, the same shall not be opened by the person or persons desiring the same, until the person or persons objecting shall be paid all the damages to be sustained by the opening thereof; and in case the parties can not agree on the amount of damages, the same shall be ascertained and assessed as hereinafter provided; and the damages being paid on final decision, the person or persons apply-

ing therefor, their heirs and assigns, shall have the right to open said road, and shall have the right of way upon the same forever thereafter.

SEC. 22. The county commissioners' court of each county in this State, at their March term, annually, shall fix and enter upon the records of their court, a certain number of days that each able-bodied man between the age of twenty-one and fifty years, shall labor upon some public road within the county, during the year: *Provided*, That in no case shall said court be authorized to fix the number of days less than one, or to exceed five days, as a requisition in labor. The clerk of said court shall append the number of days fixed as aforesaid, to the notice of each supervisor appointed in said county.

SEC. 23. The county commissioners' courts of the several counties in this State, in levying a tax, not exceeding fifty cents on every one hundred dollars' worth of taxable property in their counties respectively, for county purposes, which they are authorized by law to levy, may, at the time of fixing upon the amount of tax to be assessed and collected for county purposes, in their discretion, set apart any amount of the tax so levied for county purposes, not exceeding one-half of said levy for road purposes; and a column in the tax-book, shall designate the amount of road tax due from each person to be collected.

SEC. 24. The clerk of the commissioners' court, immediately on the return of the assessor's book, shall make out a list of the names of all individuals owing road tax, in each road district in the county, with the amount of tax due therefrom, ascertaining the residence of, and the road district to which each person properly belongs; which lists shall be handed to the sheriff, and by him delivered to the respective supervisors. And any clerk or sheriff who shall fail or neglect to perform the duty required in this section, within the time given to each, as specified in the twelfth section of this chapter, in serving notices on supervisors, shall be fined in the same sums as stated in said section.

SEC. 25. It shall be the duty of each supervisor to call on all able-bodied male persons over twenty-one and under fifty years of age, in his district, to perform the number of days' labor due for the year, giving such person at least three days' notice of the time when, and place where the work is required, and stating what description of tools to bring; which notice shall be given by the supervisor in person, verbally, or by a written or printed notice, or by some person appointed by him to warn in the hands; in which latter case the notice shall be written or printed, and signed by the supervisor. The supervisor shall observe the hour appointed to meet, that each individual do appear at the time, with the tool directed to be brought; and when on the road, that each person shall work industriously and diligently, doing at least eight hours' faithful labor in each day, at such work and in such manner as shall be directed by the supervisor. Any person neglecting or failing to attend and do the work due on the roads, after being notified as above stated, by himself, or a substitute equally able as himself, shall pay for each day one dollar. Should any person be idle, not work diligently, be turbulent, interrupt other hands or disobey the supervisors, power is hereby given, and it shall be the duty of the supervisor to discharge said hand from the road; and for each day's labor which may then be due from such person, he shall be bound to pay one dollar and fifty cents.

SEC. 26. The tax list being placed in the hands of the supervisor, he shall notify each person residing in said supervisor's district, of the amount due, and that the same may be discharged in labor; and shall thereupon request payment in

money or labor, first notifying the individual of the time and place to attend and work the same out at a rate to be fixed by the county commissioners' court, but not exceeding one dollar per day, bringing with him such tools as may be directed by the supervisor, the labor to be performed by the principal or a substitute equally able, working industriously at least eight hours each day; and may, for any of the causes in the foregoing section, idleness, turbulence or disobedience, be discharged from the road by the supervisor, and the balance due shall be collected, with twenty-five per cent. advance.

SEC. 27. It shall be the duty of supervisors to sue in the name of the county commissioners, in their official capacity, for all labor and taxes which shall be due from each person residing in their respective districts, and remain unpaid after notice shall have been given, and a failure to settle the same as provided in the foregoing sections; and having collected the same, shall, without delay, disburse the money to the best advantage, on public roads in the district to which such labor or tax properly belongs. In all cases, the supervisor shall be a competent witness in suits brought as above stated; and an appeal may be taken to the circuit court by either party, as in other cases of appeal from justices of the peace.

SEC. 28. Every supervisor shall endeavor to collect all road and labor tax, and close the work by the twenty-fifth of December, annually. And they are absolutely bound to return to the clerk of the county commissioners' court the tax list, by the first of January, marking carefully and truly the amount paid on said road tax list, how much in work, and the amount in money, by each individual named, and shall give a receipt to each individual if requested. The clerk and collector shall give credit on the general tax list, to each person, for the amount paid, and the balance due shall be collected by the proper officer out of the goods and chattels, lands and tenements of the person owing, in the same manner as other revenue for the State and county shall be collected. All moneys collected as above, after deducting the per cent. for collecting and costs paid out, to be allowed by the commissioners' court, shall be set apart in the treasury of the county as a road fund, to be disbursed by order of the commissioners' court, in the erection of bridges, and improvement of such public roads in the county as they may deem most advantageous to the public; and in no case, shall the court appropriate or divert any portion of said road fund to any other purpose than the construction of roads and road purposes: *Provided, always,* That fines and forfeitures incurred under the provisions of this chapter, shall be applied to the improvement of the public roads within the bounds of such road district wherein such fines and penalties may have been incurred.

SEC. 29. Supervisors are hereby authorized to hire teams to do the necessary hauling, ploughing and scraping, to contract for materials for building bridges, causeways, erecting guide-boards, for making and furnishing road scrapers, and repairing roads in discharge of labor and road tax due, and so far as funds shall come into possession, procuring said teams, materials, implements and work, on the best possible terms.

SEC. 30. All power, jurisdiction and control, is hereby given to the county commissioners' courts of the several counties, of and concerning State roads, roads located directly by the State; and the same shall be opened, improved and kept in repair as other roads in the counties, subject to alteration, change and relocation, as hereinafter pointed out.

SEC. 31. When any person or persons desire a change or relocation of any State road now located, notice of such intended application shall be given by setting

up advertisements in writing, at least one in each road district through which said road shall pass, and on the court house door, twenty days previous to the sitting of the court to which application shall be made; and on petition of a majority of the qualified voters of each road district through which said road shall pass, and a majority of the voters living immediately in the vicinity of such road, the court shall appoint three viewers to examine and make the necessary relocation; they shall carefully view the road as located, and the ground for the proposed route, and being of opinion that the public good requires an alteration, in view of obtaining a more suitable place to erect a bridge over a stream, wind a hill, avoid a swamp, expensive work, or where the present road greatly damages an individual, and can be varied without material damage to the public; in such cases, alterations may be made; and a majority of said viewers being of that opinion, they shall cause a survey and relocation to be made, returning to the commissioners' court, a plat with the courses and distances of the road as established. But if they consider an alteration not necessary, they shall so report, and the court may confirm and accept the report, or take such further action thereon as to them may seem right. In like manner, any State road now established, which may be considered useless or burthensome, on notice, petition, view and report to that effect, as required in this section in case of an alteration, the same may be annulled and vacated.

SEC. 32. When it shall become necessary to have a State or county road now located and established, altered, relocated or vacated at a county line, or a new road laid out, the same being petitioned for, and notice given, as required in the preceding section, the same shall be agreed on by viewers from each county, to be appointed by the counties immediately interested; and no road shall be altered at a county line or elsewhere, unless a majority of the viewers appointed, agree on such change or alteration: *Provided*, That no application shall be acted upon, or viewers appointed, as contemplated in the preceding sections, unless the petitioners deposit money sufficient to pay the viewers in case an unfavorable report be made, to be refunded should the road be located, altered or vacated, as petitioned for. And the petitioners, in case a new road shall be established, or a change in the location of a road, shall contribute one day's work on the same or some other road in the county, as required in the seventeenth section of this chapter. In case of a disagreement in the location or alteration of any road crossing a county line, by the county authorities, either county may appeal to the circuit court, who shall hear and determine the case, grant a review, appoint viewers, and make such order therein as shall seem right in the establishment of the road in dispute.

SEC. 33. All roads shall be surveyed, and a plat, with the courses and distances thereof, returned with the report of the viewers to the commissioners' court, which shall be recorded and filed. The commissioners' court, on the return of the report and plat, shall determine and establish on record, the width of the road, making the main leading roads four rods wide, and none less than thirty feet.

SEC. 34. In the location and alteration of all roads, it shall be the duty of viewers to make the same as direct as the ground and circumstances will allow, particularly the main leading roads. Previous to entering upon their duties, they shall be sworn before some judge of a court, or justice of the peace of the State, that they will faithfully, impartially, and to the best of their judgment, discharge the duties incumbent on them as road viewers under the law and appointment of the court.

SEC. 35. At the March term of the commissioners' court, annually, each supervisor shall make a report, showing the whole number of days' work that has been done in his district during the year; by whom done; the amount of money by him received; from whom; for road tax or otherwise, due on roads; the amount paid out by him in constructing roads, with the vouchers accompanying; at which term he shall make a settlement with the court, and if a balance should appear in his hands, the same shall be disbursed in the district, or added to the general road fund, as the court shall order. Supervisors may appoint one or more persons to warn in the hands, and make an allowance out of the labor or tax due from such person. No allowance shall be made to any supervisor for services, out of the county treasury, except for sums required by the fifteenth section of this chapter; but he shall be wholly exempt from doing military duty in time of peace, and from serving on grand and petit juries while acting as supervisor; and shall have power and authority to appoint one or more deputies, suitable person to oversee laborers, and direct the work, the supervisor being responsible.

SEC. 36. Road viewers shall be allowed one dollar, and surveyors two dollars for each and every day necessarily employed; and chain and axe-men, seventy-five cents per day.

SEC. 37. The supervisor, for the purpose of building or repairing any bridge or causeway, by order of the county commissioners' court, is hereby authorized to enter upon the nearest unimproved land, and to cut and haul away timber, or to quarry and haul rock, gravel, sand or earth, which may be necessary for that purpose: *Provided*, He shall not take away timber already cut, or any rock or gravel already quarried for another purpose, without leave from the owner or his agent: *Provided, also*, That unless the owner, or his or her agent, shall first consent to the cutting of timber, or the quarrying of stone, or the taking of gravel, sand or earth, the supervisor shall call upon two discreet householders to value the materials about to be used. If the owner of the materials or his agent, shall see proper, he may choose two other discreet householders, to act with such as may be chosen by the supervisor, and if they can not agree, the four shall choose a fifth, as umpire; and the five, or a majority of them, shall make out their award under their hands and seals, and transmit it to the clerk of the county commissioners' court, who shall file and preserve the same; which award shall be final and conclusive, of the amount of damages sustained by such person; and the amount so awarded, shall be paid to the owner of the materials or his or her agent, out of the county treasury; and the supervisor shall be authorized and warranted in taking such materials as soon as the award shall be made.

SEC. 38. In all cases, where a public road shall have been heretofore authorized by law to be laid out or constructed in this State, either by State or county authority, and the same is required to pass over the land belonging to any company, corporation or individual, and the owner or owners shall object thereto, and can not agree with the commissioner, superintendent or supervisor, authorized to construct the same, on the amount of damage which such owner or owners may claim, it shall be lawful for such commissioner, superintendent or supervisor, to apply to some justice of the peace of the county where the same may occur, who shall cause three householders to appear before him, and the householders so summoned, after being sworn, faithfully and impartially to examine the ground which shall be pointed out to them by the commissioner, superintendent or supervisor, shall assess the damages which they shall believe such owner or owners will sustain,

over and above the additional value which such lands will derive from the construction of such road, and make two written reports signed by at least a majority of them; one of which they shall give to the commissioner, superintendent or supervisor requesting the view, and the other to the opposite party; which award or assessment of damages shall, as well where the amount shall be agreed upon by the parties without applying to a justice of the peace, be laid before the county commissioners' court for consideration, who shall examine the matter, and should they decide the amount of damages is not unreasonable, or more than should be given, and that the opening and improving the road is called for by the public interest, and the finances of the county will justify, they, in that case, will approve and accept the award, and order the money to be paid; and the same being paid, the commissioner, superintendent or supervisor, shall proceed to open and construct said road; which proceedings being recorded in the commissioners' court, the right of way shall be thereby secured: *Provided*, That the corporation, company, owner or owners of the land shall have the right to appeal from the decision of the commissioners' court to the circuit court, and the case shall be acted upon in such manner as the court may determine, with a view to justice, and the establishment of the road, who shall make such order therein as may seem right and just, which decision shall be final. The provisions of this section shall extend to a cart-way, as contemplated in the twenty-first section of this chapter; viewers appointed to be sworn, report to be made, the damages to be paid by the individuals desiring the cart-way, to be confirmed by the commissioners' court; and either party may appeal to the circuit court, where the case being fully heard, such judgment or order shall be made thereon, as the court shall deem right, and which shall be a final decision.

SEC. 39. Supervisors are hereby authorized to bring suits before any justice of the peace of the county, to recover any and all sums due for road labor, road tax, fines and forfeitures imposed by this chapter, which are intended to come into the hands of such supervisors for road purposes, and to collect, disburse and account for the same; suing in the name of the county commissioners, in their official capacity.

SEC. 40. Any supervisor who neglects to keep the roads in his district in good repair, agreeably to the provisions of this chapter, or fails to perform any other duty herein required, shall be liable to indictment, and on conviction thereof, shall be fined, in a sum not less than five dollars, and not exceeding fifty dollars, to be expended on some road within the district of said supervisor.

SEC. 41. The clerk of the commissioners' court in each county shall, at each term of the circuit court, make out and furnish the grand jury with a list of the names of all supervisors in the county, with the date at which they were appointed.

SEC. 42. Sheriffs, and clerks of the county commissioners' courts, shall be allowed a fair and reasonable compensation for discharging the duties required of them by this chapter, to be paid out of the county treasury, on the allowance and order of the county commissioners' courts respectively.

APPROVED: March 3, 1845.

CHAPTER XCIV.
SALTPETRE CAVES.

SECTION

1. Saltpetre caves to be inclosed so as to exclude stock.

SECTION

2. Persons working caves without inclosing them, fined fifty dollars, and liable for all damages.

SECTION 1. All persons working saltpetre caves in this State, for the purpose of manufacturing saltpetre, shall, previous to commencing the manufacture of saltpetre, inclose such caves with a good and lawful fence, and keep the same at all times in good repair, so as to prevent cattle and other stock from gaining access thereto.

SEC. 2. All persons working saltpetre caves in this State, and not first complying with the preceding section, may be fined, in any sum not exceeding fifty dollars, to be recovered before any justice of the peace of the county in which the offence may be committed, upon complaint made by any person, in the name of the county commissioners' court of such county, one-half to the person suing therefor, the other to the county commissioners' court of the county; and shall also be liable for all damage which individuals may sustain by reason of their stock gaining access to saltpetre caves or manufactories.

APPROVED: March 3, 1845.

CHAPTER XCV.
SEAT OF GOVERNMENT.

SECTION

1. Seat of government to be at Springfield; supreme court to hold its terms, and the General Assembly its sessions at that place; resi-

SECTION

dence of officers required to be at the seat of government, to be at Springfield, &c.

SECTION 1. The seat of government of the State of Illinois, shall be deemed and held to be at Springfield, in the county of Sangamon; and all terms of the supreme court, and sessions of the General Assembly, shall be holden at Springfield; and all acts, judicial, legislative or executive, required to be done or executed at the seat of government, shall be done and executed at Springfield; and all laws requiring any officers to reside at the seat of government, or requiring any matter or thing to be done and performed, or requiring action of any kind, by officers or individuals, at the seat of government, are hereby made and declared applicable to Springfield, as the seat of government.

APPROVED: March 3, 1845.

CHAPTER XCVI.

SECRETARY OF STATE.

SECTION

1. Secretary to keep State seal; to keep record of executive acts; report, &c.
2. To purchase furniture, fuel for offices, and for the General Assembly; his accounts, how kept and paid.
3. To keep State House in repair, &c.
4. To preserve furniture, &c., of the two houses.
5. Shall, when requested, give certified copies of laws, &c., in his office; fees therefor.
6. Commissions to be countersigned, sealed and register thereof kept by secretary.
7. Laws, &c., to be deposited in secretary's office.

SECTION

8. Books, bills, &c., in possession of either House of the General Assembly, to be deposited in secretary's office on their adjournment.
9. Duty of secretary and treasurer to preserve from waste, the State House and public property in Springfield.
10. Geological specimens, &c., to be preserved by the secretary of State.
11. To keep catalogue, &c., of geological specimens.
12. To file and preserve letters and statements concerning specimens; to report to the legislature.

SECTION 1. The secretary of State shall be keeper of the seal of the State: he shall reside and keep his office at the seat of government: shall keep a fair register of all the official acts of the governor; and when required, shall lay the same, and all papers, minutes and vouchers relative thereto, before either House of the General Assembly.

SEC. 2. It shall be the duty of the secretary of State to procure the necessary furniture, presses for the safe deposit of the archives of his office, and the necessary books and stationary, and fuel for use therein. It shall be his duty to purchase all articles necessary for the use of the members of the General Assembly, and the officers of the same, which he shall charge to the State in his own name; taking in all cases, a receipt from the person of whom the same shall be purchased: and all expenditures under this section shall be certified by the Governor to the auditor of public accounts, who shall issue his warrant upon the State treasurer for the amount of the same.

SEC. 3. As often as the windows and doors of the State house, shall need repairs, or the furniture thereof to be replenished or repaired, the said secretary shall have the same done, which shall be allowed and paid for as above; and he shall permit the firewood which may remain on hand, at the end of the General Assembly, to be used for the public offices.

SEC. 4. At the close of every session of the General Assembly, the secretary of State shall cause all the tables, chairs, desks and other furniture of the two Houses of the General Assembly, to be placed in secure rooms and locked therein; and he shall not permit any part of said furniture to be used during the recess of the General Assembly, for any purpose whatever.

SEC. 5. The secretary of State shall, when required by any person or persons so to do, make out copies of all laws, acts, resolutions or other records, appertaining to his said office, and shall attach thereto his certificate, under the seal of this State, and for which he shall be entitled to such fees and compensation as now are, or hereafter may be allowed by law.

SEC. 6. All commissions required by law to be issued by the Governor, shall be countersigned by the secretary of State, who shall also affix the State seal thereto. He shall also make a register of such commission, specifying the person to whom given or granted, the office conferred, with the date and tenor of such commission, in a book, to be provided and kept for that purpose.

SEC. 7. All public acts, laws and resolutions that have been, or shall be passed by the General Assembly of this State, shall be carefully deposited in the office of secretary of State; and the secretary of State is hereby charged with the safe keeping of said office, and all laws, acts, resolutions and records deposited, or which shall hereafter be deposited therein.

SEC. 8. The secretary of the senate and clerk of the house of representatives, at the close of each session of the General Assembly, shall deliver to the secretary of State, all books, bills, documents and papers in the possession of either branch of the General Assembly, correctly labelled, folded, and classed according to the subject matter of such documents respectively; and the secretary of State is hereby required to file the same in his office.

SEC. 9. It shall be the duty of the secretary of State and treasurer, to take charge of and safely preserve from waste, the houses, lots, grounds and appurtenances, situated within the city of Springfield, and belonging to the State of Illinois.

SEC. 10. It shall be the duty of the secretary of State, to receive and safely preserve, in some convenient and proper place in the State house, all such geological and mineralogical specimens, ancient remains, Indian and other antiquities, as may be presented or sent to him.

SEC. 11. It shall also be the duty of the secretary of State, to make and preserve, in the library room of the State house, or in the room where said specimens shall be kept, a catalogue, specifying therein from what place, from whom and when the same was received, with such additional memoranda as he shall deem important and proper.

SEC. 12. It shall be the duty of the secretary of State to file away and preserve in his office, all letters and written statements accompanying said specimens, and such treatises on scientific subjects as shall be furnished to him: and at each session of the General Assembly, he shall report thereto, giving a general account of the specimens received and the information obtained.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Act No. 32.]

CHAPTER XCVII.

SECURITIES.

SECTION

1. One person bound as security for another, who is about to abscond or become insolvent, may notify creditor to bring suit, if right of action has accrued; if creditor fail to bring suit or take measures to recover of principal in a reasonable time, securities to be released from liability.
2. Heirs and other legal representatives; same rights and liabilities pertain to them as to principals.
3. What securities not affected by this chapter.

SECTION

4. Rights and remedies of creditor against principal debtor not impaired hereby.
5. Securities, who have paid debt for principal, may have summary remedy for its recovery.
6. Obligations of joint securities to creditor, and to each other, defined.
7. Security shall not confess judgment so as to distress principal, provided principal will give him collateral security.
8. How bail may proceed against principal, after having suffered judgment.

SECTION 1. When any person or persons shall hereafter become bound as security or securities by bond, bill or note, for the payment of money or other property, shall apprehend that his or their principal debtor or debtors, is or are likely to become insolvent, or to migrate from this State, without previously discharging such bond, bill or note, so that it will be impossible or extremely difficult for such security or securities, after being compelled to pay the money or other property due by such bond, bill or note, to recover the same back from such principal debtor or debtors, it shall or may be lawful for such security or securities, in every such case, provided an action shall have accrued on such bond, bill or note, to require, by notice in writing, of his, her or their creditor or creditors, or his, her or their assignee, forthwith to put the bond, bill or note by which he, she or they may be bound as security or securities as aforesaid, in suit: and unless such creditor or creditors, or assignee, so required to put such bond, bill or note in suit, shall, in a reasonable time, commence action on such bond, bill or note, and proceed with due diligence in the ordinary course of law, to recover a judgment for, and by execution to make, the amount due by such bond, bill or note, the creditor or creditors, or assignee so failing to comply with the requisitions of such security or securities, shall thereby forfeit the right which he or they otherwise have to demand and receive of such security or securities the amount which be due by such bond, bill or note.

SEC. 2. Any security or securities, or in case of his, her or their death, then his, her or their heirs, executors or administrators may, in like manner, and for the same cause, make such requisitions of the executors or administrators, or assignee of the creditor or creditors of such security or securities, as is hereinbefore enacted may be made by a security or securities of his or their creditor or creditors; and in case of failure of the executors or administrators so to proceed, such requisition as aforesaid, being duly made, the security or securities, his or their executors or administrators making the same, shall have the same relief that is hereinbefore provided for a security or securities, when his or their creditors shall be guilty of a similar failure.

SEC. 3. Nothing contained in this chapter shall be so construed as to affect bonds, collateral conditions, or the bonds which may be entered into by guardians, executors, administrators, or public officers.

SEC. 4. The rights and remedies of any creditor or creditors, against any principal debtor or debtors, shall be in nowise affected by this chapter; anything herein to the contrary, or seeming to the contrary notwithstanding.

SEC. 5. In all cases where judgment hath been or shall hereafter be entered up in any of the courts of record within this State, against any person or persons as security or securities, their heirs, executors or administrators, upon any note, bill, bond or obligation, and the amount of such judgment, or any part thereof, hath been discharged by such security or securities, his, her or their heirs, executors or administrators, it shall be lawful for such security or securities, his, her or their heirs, executors or administrators, to obtain judgment by motion, against such principal obligor or obligors, his, her or their heirs, executors or administrators, in any court where such judgment may be entered up against such security or securities, his, her or their heirs, executors or administrators.

SEC. 6. Where the principal obligor or obligors have, or shall hereafter become insolvent, and there have been, or shall be two or more securities jointly bound with the said principal obligor or obligors in any bond, bill, note or other obligation, for the payment of money or other things, and judgment hath been, or hereafter shall be obtained against one or more securities, it shall and may be lawful for the court, before whom such judgment was, or shall be obtained, upon the motion of the party or parties against whom such judgment hath been entered up as securities, as aforesaid, to grant judgment and award execution against all and every of the obligors and their legal representatives, for their and each of their respective shares and proportions of the said debt, with the damages and costs of the former suit.

SEC. 7. No security or securities, his, her or their heirs, executors or administrators, shall be suffered to confess judgment, or suffer judgment to go by default, so as to distress his, her or their principal or principals, if such principal or principals will enter him, her or themselves, as defendant or defendants to the suit, and tender to the said security or securities, his, her or their heirs, executors or administrators, other good and sufficient collateral security, to be approved of by the court before whom the suit shall be depending.

SEC. 8. In all cases where judgment hath been, or hereafter shall be entered up in any of the courts of record in this State, against any person, as appearance or special bail for the appearance of another, to defend any suit depending in such court, and the amount of such judgment, or any part thereof, hath been paid or discharged by such bail, his, her or their heirs, executors or administrators, it shall and may be lawful for such bail, his, her or their heirs, executors or administrators, to obtain judgment by motion, against the person or persons for whose appearance they were bound, his, her or their heirs, executors or administrators, for the full amount of what may have been paid by said bail, his, her or their heirs, executors or administrators, together with interest and cost, in any court where judgment may have been entered up against such appearance or special bail: *Provided, always,* That no judgment shall be obtained by motion in any of the cases aforesaid, unless the party or parties against whom the same is prayed, shall have ten days' previous notice thereof.

APPROVED: March 3, 1845.

CHAPTER XCVIII.

SCHOOLS.

SECTION

1. What lands reserved and held as common school lands.
2. School lands to be under the superintendence of commissioners of counties in which lands lie.
3. Trespasses to timber on school lands, how punished; trespassers jointly and severally liable; trespassers liable to indictment and fine; to whom fines payable.
4. Secretary of State, *ex officio*, superintendent of common schools; his duty as such.
5. To have supervision of schools; to advise teachers, school commissioners, &c., as to books, school houses and schools.
6. Shall report to the Governor, before the fifteenth of December, once in two years; what facts to be contained in report.
7. School commissioners elected in each county once in two years, who shall give bond; its conditions.
8. Contested elections of, how decided; vacancies, how filled.
9. He shall sell school lands, loan funds, apply interest in support of schools, collect funds for townships.
10. May be removed for cause; may be required to give new bond.
11. Shall keep books; what to be recorded therein.
12. Commissioner to be superintendent *ex officio* for his county; shall visit schools, and examine teachers; teacher not examined and approved, not to receive school moneys; superintendent to report once in two years, to the State superintendent.
13. School lands may be sold on petition of two-thirds of inhabitants of township; how, and by whom to be signed; *proviso*.
14. Lands, how divided and sold; plat to be filed.
15. Divisions, how made.
16. Terms of sale, cash; purchaser may borrow amount of his bid, by giving security, &c.
17. Sale to be at the court house; notice to be given.
18. Order, manner and time of sale.
19. If bidder fail to pay, land to be re sold; may be sued for failure.
20. Lands not sold, subject to private entry.
21. Unsold lands to be re-valued after two years; report of second valuation.
22. When sale completed, entry and report thereof to be made.
23. School commissioner to report account of money received and loaned.
24. To report sales to auditor.
25. Purchaser entitled to patent; by whom and how patent executed; auditor to keep record of.
26. Duplicates of patent, how may be obtained.
27. Commissioners may loan school funds; rate of interest to be eight per cent.; time of loan fixed; what security required.
28. Notes and mortgages, to whom payable; form of mortgage; suit thereon; mortgage, if in

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- different form, valid; improvements on mortgaged lands not to be estimated.
29. If additional security required be not given, suit may be brought.
30. School fund to have preference in payment of debts by executors and administrators.
31. If default be made in payment, twelve per cent. may be charged; how recovered; semi-annual interest may be sued for; jurisdiction of justice of the peace.
32. Interest account to be kept; interest to be added to principal.
33. School commissioners and trustees may bid off real estate, if advantageous to the fund; former purchases valid.
34. May compromise with debtors, and make settlements of debts; may receive estate, &c.; such lands may be leased or sold; how leased or sold.
35. Congressional township constituted a school township, and incorporated by the election of trustees; trustees, their term of office.
36. Qualification of trustees.
37. Election of trustees, when to be held; notice of election, how given.
38. Judges of such elections, how chosen.
39. Elections, how conducted, &c.
40. Voters, their qualifications; tie, how decided.
41. Subsequent elections, how held; vacancies, how filled.
42. Election returns, how certified and disposed of.
43. Trustees to be elected, to succeed trustees under old law; their powers; their title; rights of former trustees vested in them.
44. Meetings of trustees to be quarterly; quorum.
45. Trustees to appoint treasurer; his duties.
46. Treasurer to be, *ex officio*, superintendent of schools for his township; his duties in that capacity.
47. Township school fund to be paid to treasurer.
48. Treasurer, his term of office; may be removed.
49. Shall give bond; penalty and conditions; bond to be approved and filed.
50. On giving bond, books, moneys, &c., to be delivered to treasurer; his receipt therefor to be evidence.
51. Treasurer to keep books of account, and of record; shall keep record of acts of trustees; such record open to inspection; when funds may remain in hands of commissioner.
52. On what conditions, and in what manner treasurer may loan funds; securities taken in official name of trustees.
53. Township funds to be loaned; interest, how applied; when interest may be loaned, as well as principal.
54. Treasurer to keep interest account; interest to be added to principal.
55. Trustees, at quarterly meeting, to examine books.

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56. Interest, account of, made semi-annually; subject to be distributed.
57. In case of resignation or death of treasurer, books, papers, &c., how to be disposed of.
58. What schools shall receive benefit of school fund.
59. Trustees to lay off townships into school districts; to purchase libraries; to preserve funds; to take and hold real estate; to regulate management of schools; to divide districts; general powers.
60. School directors, when, how, and for what time elected; their qualifications; quorum; may employ teachers and fix their compensation, erect school houses, visit schools, make rules, &c.
61. Shall see that schools are well conducted, and proper schedules kept; furniture, fuel, &c., how paid for.
62. Teachers required to make schedules of scholars; what facts schedules shall contain; form of schedule for a common school.
63. How schedule shall be closed, added up and certified.
64. Form of teacher's certificate.
65. School directors shall examine schedule, correct errors, and certify its correctness; form of their certificate.
66. Schedules, when made and certified, to be delivered to treasurer, who shall make abstracts thereof for use of trustees.
67. Children residing in one district, may be sent to school in another, with consent of its directors, but shall not partake in the control of such school; children residing in one township may attend school in another, &c.
68. Directors to furnish treasurer once in two years, with list of children under twenty-one years of age; when treasurer shall make such enumeration.
69. Punishment for making false return.
70. Treasurer shall report biennially to school commissioner, abstracts of the number of children; school commissioner shall apportion funds according to such number, and pay it to treasurers of townships annually.
71. Treasurers shall pay to teachers; shall lay abstracts before trustees; trustees shall apportion funds among districts; if for ten successive months, no school be kept in any district, such district not to share in school fund; its share, how disposed of.

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72. Schedules of teachers to be reported semi-annually, by treasurer to trustees, who shall apportion funds among teachers.
73. Teachers, who have returned schedules from other townships, to share in distribution of funds.
74. Teacher may sue trustees for refusal to pay; in what case their individual property shall be liable.
75. What moneys shall constitute the common school fund.
76. State to pay interest on common school fund; college and seminary fund, to be loaned to, and made part of school fund.
77. Auditor to ascertain number of children under twenty years of age in each county, and divide interest accordingly, and issue his warrants therefor.
78. How such money to be divided among townships, county school fund, division of.
79. Township funds, how applied.
80. Compensation of commissioners; compensation of treasurer; duty of trustees as to compensation, &c.
81. School officers, how punished for embezzlement of school funds.
82. Trustees liable for insufficiency of bond of treasurer; jointly and severally liable.
83. Real estate of school officers liable from date of process; sale, &c., not to defeat lien on such estate.
84. Special tax may be laid in school districts, by voters thereof; how and when vote to be taken.
85. Vote of two-thirds necessary to levy tax; its amount; record of vote to be kept; treasurer to certify vote to county commissioners' court; tax to be computed, entered in tax book, collected and paid over to treasurer of school township.
86. Depreciated funds to be sold for cash.
87. School fund not liable for costs.
88. Acts repealed.
89. Officers under old laws to continue until superseded; town corporations not disturbed; nor school districts; leases confirmed; disposition of unsold lands; contracts, &c., made under late laws, to continue valid.
90. Trustees may examine teachers, and give certificate of qualification.

SECTION 1. Section number sixteen, in every township granted to the State by the United States, for the use of schools, and such sections as have been or may be granted as aforesaid, in lieu of section sixteen; and also, the lands which have been or may be selected and granted as aforesaid, for the use of inhabitants of fractional townships, for the use of schools, in which there is no section numbered sixteen, or where such section shall not contain the proper proportion for the use of schools in such fractional township, shall be held as common school lands: and the provisions of this chapter referring to common school lands, shall be deemed to apply to the lands aforesaid.

SEC. 2. The common school lands shall be under the care and superintendence of the county commissioners of the several counties in which the same may be situated, except that when any township lies in more than one county, the business of the township relating to common school lands, shall be transacted in the county containing the greater portion of such land.

SEC. 3. If any person shall, without being authorized, cut, fall, box, bore, destroy or carry away, any tree or sapling, standing or being upon any common school

lands, such person shall forfeit and pay, for every tree or sapling so felled, boxed, bored, destroyed or carried away, the sum of eight dollars; which penalty shall be recovered, with costs of suit, by action of debt or assumpsit, before any justice of the peace, or in the circuit court, either in the corporate name of the trustees of schools in the township to which the land belongs, or by action *qui tam*, in the name of any person who will first sue for the same, one-half for the use of the person suing, the other half to the use of the township aforesaid. When two or more persons shall be concerned in the same trespass, they shall be jointly and severally liable for the penalty herein imposed. Every trespasser upon common school lands shall be liable to indictment, and upon conviction, fined in three times the amount of the injury occasioned by such trespass, and shall stand committed as in other cases of misdemeanors. All penalties and fines imposed under the provisions of this section, shall be paid to the treasurer of the township, and be added to the principal of the township fund: *Provided*, That when recovered by action *qui tam*, one-half only shall be so paid.

SEC. 4. The secretary of State shall be, *ex officio*, State superintendent of common schools: He shall counsel and advise, in such manner as he may deem most advisable, with experienced and practical school teachers, as to the best manner of conducting common schools, and the most approved text books, maps, charts, apparatus, &c., to be used in common schools.

SEC. 5. Said superintendent shall have the supervision of all the common schools in the State, and shall be the general adviser and assistant of school commissioners in the State: He shall, from time to time, as he may deem for the interest of schools, address circular letters to said commissioners, giving advice as to the best manner of conducting schools, constructing school houses and procuring competent teachers: he shall recommend the most approved text books, maps, charts and apparatus, and shall urge uniformity in the use of the same, as well as in the manner of conducting common schools throughout the State, and shall use his influence to reduce to a system of practical operation, the means of supporting common schools in the State.

SEC. 6. The State superintendent shall, before the fifteenth day of December, eighteen hundred and forty-six, and before the fifteenth day of December, in every second year thereafter, report to the Governor, the condition of common schools in the several counties of the State, the number of schools in each county, the number taught by males, and by females, the number of scholars in attendance, and the number in the county under twenty-one years of age, the amount of township funds, the amount annually expended for schools, the amount raised by an *ad valorem* tax, the number of school houses, together with such other information and suggestions as he may deem important in relation to the school laws, and the means of promoting common school education throughout the State, which report shall be laid before the General Assembly, at each regular session.

SEC. 7. On the first Monday in August next, and on the same day every two years thereafter, there shall be elected by the qualified voters of each and every county in this State, a school commissioner, who shall execute the duties herein required. He shall, before entering upon his duties, execute a bond, payable to the people of the State of Illinois, with two or more responsible freeholders as security, to be approved by the county commissioners' court, in a penalty of not less than twelve thousand dollars, to be increased under the discretion of said court, in proportion to his responsibilities, conditioned that he will faithfully perform all the duties of school commissioner for said county, according to the laws which are, or

may be in force; by which bond the obligors shall be bound jointly and severally, and upon which an action or actions may be maintained for the use of any township or fund injured by any breach thereof, and joint actions may be maintained to the use of two or more funds.

SEC. 8. All contests in relation to the election of school commissioner, shall be decided as in relation to sheriffs and coroners; and when any vacancy shall occur in the office of school commissioner, the county commissioners' court shall fill such vacancy by appointment, till the next regular election for such officer, and until his successor is qualified; and the person so appointed, shall give bond and security, the same as if elected by the people.

SEC. 9. The said commissioner shall make sale of the common school lands held for the use of each township in his county, upon the terms and in the manner required by law. He shall then loan the funds of the township, apply the interest accruing upon township funds, to the support of common schools, and perform such other duties as may be required of him. He shall also attend to the collection of all demands in favor of the several townships of his county, to settling the accounts of trustees, and, when necessary, to the prosecution of suits for the recovery of demands in favor of townships; and all moneys collected, shall be applied as required by law.

SEC. 10. The said commissioner shall be liable to removal by the county commissioners' court, for any palpable violation of law or omission of duty; and if a majority of said court shall at any time be satisfied that his bond is insufficient, it shall be his duty, on notice, to execute a new bond, to be payable, conditioned, and approved as the first bond; the execution of which shall not affect the old bond, or the liability of the security thereon.

SEC. 11. The said commissioner shall provide three well bound books for the following purposes: *First*, a book in which he shall record at length, all petitions presented to him for the sale of common school lands, and the plats and certificates of valuation made by or under the direction of the trustees of schools, and all the affidavits in relation to the same. *Second*, a book in which he shall keep a list of all sales of school lands, which list shall contain the date of sale, name of purchaser, quantity and description of lands sold, and the sum sold for. *Third*, a book in which he shall keep a regular account of money received and paid, or loaned out, the person to whom loaned, the time for which the loan was made, the rate of interest, the names of securities, when personal security is given, or in case of real estate, a description of the same; which books shall be paid for out of the county treasuries of the counties in which they are used. The lists of sales and the accounts of each township fund shall be kept separate.

SEC. 12. Each and every school commissioner shall be, *ex officio*, superintendent of common schools in his county, and shall, by himself or some other qualified person, as often as practicable, visit all the townships in his county, inquire into the condition and manner of conducting schools in the same, and use his influence to carry out the system proposed by the State superintendent: He shall also, with such person or persons as he shall associate with him, examine any person proposing to teach a common school, in any township in his county, touching his or her qualifications, properly to teach orthography, reading in English, penmanship, arithmetic, English grammar, modern geography, and the history of the United States; and if he shall find such person qualified, he shall, on being satisfied of his or her good moral character, give such person a certificate of qualification; and no person who

shall teach a school without first having obtained such certificate, shall be entitled to receive any portion of the public fund: Said school commissioner shall, also, by the first day of November, before each session of the General Assembly, communicate to the State superintendent, all such information upon the subject of common schools in the county, as the State superintendent is bound to embody in his report to the Governor; and such other information as the State superintendent shall require.

SEC. 13. When the inhabitants of any township shall desire the sale of the common school land of the township, they shall present a petition to the school commissioner of their county for the sale thereof, which petition shall be signed by at least two-thirds of the white male inhabitants of the township over twenty-one years of age. The signing of the petition must be in presence of two citizens of the township, after the true meaning thereof shall have been explained; and when signed, an affidavit shall be fixed thereto, by the two citizens proving the signing in manner aforesaid, and stating the number of white male inhabitants in the township over twenty-one years of age; and said petition, so proved, shall be delivered to the commissioner for his action thereon: *Provided*, That no whole section shall be sold in any township containing less than fifty inhabitants: school lands in fractional townships may be sold when the number of inhabitants and the number of acres are in the ratio of fifty to six hundred and forty, but not before.

SEC. 14. When the petition and affidavits are furnished to authorize the sale of common school land, the school commissioner shall notify the trustees of schools thereof, and said trustees shall, immediately, proceed to divide the land into tracts or lots, of such form and quantity as will produce the largest amount of money; and after making such division, a correct plat of the same shall be made, representing all the divisions, with each lot numbered and defined, so that its boundaries may be forever ascertained. The trustees shall then fix a value on each lot, having regard to the terms of sale, certify to the correctness of the plat, (stating the value of each lot per acre, or by the lot, if less than an acre,) and referring to and describing the lot in the certificate, so as to fully and clearly distinguish and identify each lot; which plats and certificate shall be delivered to the school commissioner, and shall govern him in advertising and selling said lands.

SEC. 15. In sub-dividing common school lands for sale, no lot shall contain more than eighty acres, and the division may be made into town or village lots, with roads, streets or alleys between them, and through the same, and all such divisions, with all similar divisions heretofore made, are hereby declared legal: and all such roads, streets and alleys, public highways.

SEC. 16. The terms of selling common school lands, shall be, to the highest bidder for cash, with the privilege of each purchaser, to borrow the amount of his bid for any period, not less than one, nor more than five years, upon his paying interest, and giving security, as in case of money loaned.

SEC. 17. The place of selling common school lands, shall be at the court house of the county in which the land is situated; and upon the reception by the school commissioner, of the plat and certificate of valuation from the trustees, he shall proceed to advertise the said land for sale in lots as divided and laid off by the trustees, by posting notices thereof in at least six public places in the county, forty days next anterior to the day of sale, describing the land, and stating the time, terms and place of sale; and if any newspaper is published in said county, said advertisement shall be printed therein for four weeks before the day of sale; if none, then to be sold under the notice aforesaid.

SEC. 18. The order of sale shall be to begin at the lowest number of lots, and proceed regularly to the highest till all are sold or offered. No lot shall be sold for less than its valuation by the trustees; sales shall be made between the hours of ten o'clock, A. M., and six o'clock, P. M., and may continue from day to day. The lots shall be cried separately, and each lot cried long enough to enable any one to bid, who desires it.

SEC. 19. Upon closing the sales each day, the purchasers shall each pay, or secure the payment of the purchase money according to the terms of sale, or in case of his failure to do so by ten o'clock the succeeding day, the lot purchased shall be again offered at public sale, on the same terms as before; and if the valuation shall be bid, shall be stricken off, but if the valuation be not bid, the lot shall be set down as not sold. If sale is made, the former purchaser shall be required to pay the difference between his bid and the valuation of the lot; and in case of his failure to make such payment, the school commissioners may, forthwith, institute an action of debt or assumpsit in his name, for the use of the inhabitants of the township where the land lies, for the required sum; and upon making proof, shall be entitled to judgment, with costs of suit, which, when collected, shall be added to the principal of said township fund. And if the amount claimed does not exceed one hundred dollars, the suit may be before a justice of the peace; but if more than that sum, then in the circuit court of any county wherein the party may be found.

SEC. 20. All lands not sold at public sale as herein provided for, shall be subject to sale at any time thereafter, at the valuation; and commissioners are authorized and required to sell all such lands at private sale, upon the terms at which they were offered for at public sale.

SEC. 21. In all cases where common school lands have been heretofore valued, and have remained unsold two years after having been offered for sale, or shall hereafter remain unsold that length of time after being valued and offered for sale, in conformity with this chapter, the trustees of schools in townships where such lands are situated, may vacate the valuation thereof, by an order to be entered on the record book of the township, and cause a new valuation to be made, if in their opinion the interest of the township will be promoted thereby; and in such case they shall proceed to make a second valuation thereof, in the same manner as the first was made; and shall deliver to the school commissioner, a plat of such second valuation, with the order of vacation; whereupon he shall proceed in selling said land, in all respects as if no former valuation had been made: *Provided*, That the second valuation may be made by the trustees without petition, as provided in the thirteenth section of this chapter.

SEC. 22. Upon the completion of every sale by the purchaser, the school commissioner shall enter the same on his sale book, and shall deliver to the purchaser, a certificate of purchase, stating therein, the name and residence of the purchaser, describing the land, and the price paid therefor; which certificate shall be evidence of the facts therein stated.

SEC. 23. At the first regular term of the county commissioners' court, in each year, the school commissioner shall present to the court of his county: *First*, a statement showing the sales of school lands made subsequent to the previous term of the court, which shall be a true copy of the sale book: *Second*, statements of the amount of money received, paid and loaned out, belonging to any township or fund under his control, the statement of each fund to be separate: *Third*, state-

ments copied from his loan book, showing all the facts in regard to lands which are required to be stated upon the loan book.

SEC. 24. The said commissioner shall, also, at the time aforesaid, transmit to the auditor of public accounts, a full and exact transcript from his sale book, of all the sales made subsequent to each report. The list of sales filed with the county commissioners, shall be preserved and copied by the clerk of said court, into a well bound book, kept for that purpose; and the list transmitted to the auditor, shall be filed, copied and preserved in like manner.

SEC. 25. Every purchaser of common school land, shall be entitled to a patent from the State, conveying and assuring the title. Patents shall be made out by the auditor, from returns made to him by the school commissioner. They shall contain a description of the land granted, shall be in the name of and signed by the Governor, countersigned by the auditor, with the great seal of State affixed thereto by the secretary of State, and shall operate to vest in the purchaser a perfect title in fee simple. When patents are executed as herein required, the auditor shall note on the list of sales, the date of each patent in such manner as to perpetuate the evidence of its date and delivery, and thereupon transmit the same to the school commissioner of the proper county, to be by him delivered to the patentee or his assigns, upon the return of the original certificate of purchase, which certificate, when returned, shall be filed and preserved by the commissioner.

SEC. 26. Purchasers of school lands, and their heirs and assigns, may obtain duplicate copies of their certificates of purchase, and of patents, upon filing affidavits with the school commissioner in respect to certificates, and with the auditor in respect to patents, proving the loss or destruction of the originals; and such copies shall have all the force and effect of the originals.

SEC. 27. School commissioners shall loan all moneys which shall come to their hands by virtue of their office, except such interest as may be required to be paid for the support of schools, upon the following conditions. The rate of interest shall be eight per centum per annum, payable half yearly in advance, the time for which loans shall be made, shall not be less than one nor more than five years; for all sums not exceeding one hundred dollars loaned for one year, two responsible securities shall be given; for all sums over one hundred dollars, and for all loans for more than one year, security shall be given by mortgage on real estate unincumbered, in value double the amount loaned, with a condition, that in case additional security shall at any time be required, the same shall be given to the satisfaction of the commissioner for the time being. Notes and mortgages shall be payable to the school commissioner of the county without naming him, for the use of the township or fund to which the money belongs, and such notes and mortgages shall be valid, and the money may be collected thereon by suit or otherwise, in the name of the school commissioner of the county, for the use stated, without using the name of the commissioner in the prosecution thereof: *Provided, however,* That notes and mortgages in which the name of the school commissioner is inserted shall be valid to all intents and purposes.

SEC. 28. Mortgages to secure the payment of school funds loaned, may be in the following form:

"I, A. B., of the county of _____ and State of _____ do hereby grant, convey and transfer to the school commissioner of the county of _____ for the use of the inhabitants of township _____ range _____ (or for the use of the county school fund of the county of _____,) the following real estate: (here

describe the premises,) which real estate I declare to be in mortgage for the payment of \$ loaned to me by the said school commissioner, and all interest that may accrue thereon, to be computed at the rate of per centum per annum, until paid; and I hereby covenant to pay the said sum of money in years from the date hereof, and to pay interest on the same at the rate aforesaid, half yearly in advance: I further covenant that I have a good title to said estate, and that the same is free from all incumbrances; that I will pay all taxes and assessments which may be levied on said estate; and if said estate is sold to pay said debt or any part thereof, I will deliver immediate possession of the premises.

Witness my hand and seal, this day of 18

[L. s.]

Upon the breach of any condition or stipulation contained in said mortgage, an action may be maintained and damages recovered, as upon other covenants; but mortgages made in any other form, to secure the payment of school funds, shall be valid, and the rights and remedies therein shall be the same as if no form had been presented for such mortgage. In estimating the value of real estate, mortgaged to secure the payment of school funds, the value of improvements liable to be destroyed, shall not be included.

SEC. 29. In all cases, where the school commissioner shall require additional security for the payment of money loaned, and such security shall not be given, the commissioner shall sue for and recover the same and all interest accruing thereon, to the date of the judgment: *Provided*, That proof be made of the said requisition.

SEC. 30. In the payment of debts by executors or administrators, those due school funds, whether of State, county or township, shall have a preference over all other debts, except funeral and other expenses attending the last sickness, not including the physician's bill.

SEC. 31. If default be made in the payment of interest due upon money loaned by any school commissioner or township treasurer, or in the payment of the principal, interest at the rate of twelve per centum per annum, shall be charged upon the amount for which the party is or may be in default; which shall be included in the assessment of damages, in suits or actions brought upon the note or mortgage to enforce payment thereof, and interest at the rate aforesaid may be recovered in actions brought to recover interest only. And the said school commissioners or trustees of incorporated townships, are hereby empowered to bring appropriate actions for the recovery of half yearly interest, when due and unpaid, without suing for the principal, in whatsoever form secured, and justices of the peace shall have jurisdiction in such cases, of all sums under one hundred dollars.

SEC. 32. School commissioners shall keep an interest account with each unincorporated township, showing the date and amount of interest received and paid out; and at the end of every year, this account shall be balanced by transferring interest not paid or liable to be paid out, to the principal, and interest thus transferred, shall always thereafter be used as principal.

SEC. 33. The school commissioners of the several counties of this State, and the trustees of schools, are hereby vested with power and authority to purchase real estate, if, in their opinion, the interest of the school fund will be promoted thereby, in satisfaction of any judgment or decree, wherein the school commissioner or trustees of schools are plaintiffs or complainants; and the title of such real estate so purchased, shall vest in the said commissioner or trustees in whose favor the said judgment or decree was obtained, for the use of the inhabitants of said

townships, for the use of schools; and all purchases of land heretofore made by school commissioners or township trustees, for the use of any fund or township for the use of schools, are hereby declared valid.

SEC. 34. The school commissioners in this State, and the trustees of schools, are hereby vested with general power and authority to make settlements with persons indebted to them, respectively, in their official capacity; to receive deeds of real estate in compromise, and to cancel, in such manner as they may deem most proper, notes, bonds, mortgages, judgments and decrees, existing, or that hereafter may exist in their favor, when the interest of the township or the fund concerned shall, in their opinion require it; and their action shall be valid. Said commissioner or trustees, as the case may be, are hereby authorized to lease, or sell at public auction, any land that may come into their possession, in such manner and on such terms as they shall deem for the interest of the township: *Provided*, That in all cases of sale of land as provided in this section, the sale shall be made at the same place, and notice given of it, in the same manner as is provided in this chapter, for the sale of the sixteenth section.

SEC. 35. Each congressional township, as surveyed and laid off by the authority of the United States, is hereby established a township for school purposes. The business of the township shall be done by three trustees, to be elected by the legal voters of the township, and the said township, upon the election of trustees as aforesaid, as hereinafter provided for, shall be a body corporate and politic, by the name and style of "Trustees of township range _____," according to the number. The corporation shall have perpetual existence, and shall have power to sue and be sued, to plead and be impleaded, in all courts and places where judicial proceedings are had. Said trustees shall continue in office two years, and until others are elected and enter upon the duties of their office.

SEC. 36. No person shall be eligible to the office of trustee, unless he shall be a resident householder, or a resident freeholder within the township.

SEC. 37. The election of trustees shall be on the first Saturday of January, biennially. The first election shall be ordered, if in townships already incorporated, by the trustees of the township, the treasurer giving notice of the time and place, by posting up notices of the same, at least ten days previous to the day of election. If in townships not incorporated, the trustees appointed by the county commissioners' court shall give such notice. If there are no trustees in a township, the clerk of the county commissioners' court shall cause the notice to be given as aforesaid. For all subsequent elections, the like notice shall be given by the board of trustees through their treasurer.

SEC. 38. Two of the trustees of schools, whether incorporated or unincorporated township, if present, shall act as judges, and one as clerk of said election. If the trustees shall fail to attend, or refuse to act when present, then a majority of the qualified voters present shall choose from among themselves judges and a clerk to open and conduct said election.

SEC. 39. The time and manner of opening, conducting and closing said election, and the several liabilities appertaining to the judges and clerks, and the voters, separately and collectively, and the manner of contesting said elections, shall be the same as prescribed by the general election laws of this State, defining the manner of electing magistrates and constables, so far as applicable, subject to the provisions of this chapter: *Provided*, The judges may close said election at four o'clock, P. M.

SEC. 40. No person shall vote at said election, unless he possesses the qualifications of a voter at a general election. In case of a tie at such election, it shall be determined by lot on the day of the election, by the judges and clerks thereof.

SEC. 41. At all elections subsequent to the first, the trustees shall appoint the time and place of such election, and act as judges and clerks; and when a vacancy shall occur in the board of trustees, the remaining trustees shall fill such vacancy.

SEC. 42. Upon the election of trustees, the judges of the election shall cause the poll-book of said election to be delivered to the school commissioner of the county, with a certificate thereon, showing the election of trustees, and the names of the persons elected; which poll-book, with the certificate, shall be, by said commissioner, filed with the papers of the township in which such election took place, and shall be evidence of such election.

SEC. 43. The three trustees elected under the provisions of the foregoing sections, shall be successors to the trustees of school lands appointed by the county commissioners' court, and of trustees of schools elected in the townships under the provisions of an act entitled "An act making provisions for organizing and maintaining common schools," approved, February 26, 1841: And shall have and exercise all the rights, powers and duties of the trustees of school lands and trustees of schools, appointed and elected as aforesaid. They shall be styled and known as trustees of schools of the township in which they are elected. And all rights of property, and rights and causes of action existing, or vested in the trustees of school lands, or of schools appointed or elected as aforesaid, for the use of the inhabitants of the township, or any part of them, shall vest in the trustees of schools as successors, in as full and complete a manner as was vested in the trustees of school lands and trustees of schools appointed and elected as aforesaid.

SEC. 44. The trustees shall meet quarterly, and oftener if necessary, at some convenient place in the township, for the transaction of business, at which meeting two shall form a quorum.

SEC. 45. The said trustees shall, at their first meeting, appoint a treasurer of the board, who may or may not be one of their own number, whose duty it shall be to keep a fair and regular journal of the proceedings, actings and doings of the board of trustees, recording at length all by-laws and resolutions adopted, to receive and take care of, according to law, all the funds of the township, and loan the same, and pay out the interest for the support of schools, to keep regular accounts of the funds of the township, and to perform such other duties as may be prescribed by law, or required by the trustees.

SEC. 46. The treasurer shall be, *ex officio*, superintendent of common schools in his township, in which capacity, he shall visit, from time to time, the different schools in the township, confer freely with school directors and teachers, and communicate to them the plans and suggestions of the county and State superintendents, and use his influence to carry out such plans; and shall procure and furnish to the school commissioner, all such information concerning his township, as said commissioner is obliged to communicate to the State superintendent.

SEC. 47. The trustees shall cause all moneys collected for rents, or received for trespass, or which may otherwise come into their hands for the use of the township, to be paid over to the treasurer of the township, to be applied to the support of schools as hereinafter provided.

SEC. 48. The treasurer shall continue in office until the expiration of the term of service of the trustees by whom he was appointed, and until the appointment

and qualification of a successor ; but he shall be subject to removal at any time by the trustees, for improper conduct in the discharge of his duty as treasurer.

SEC. 49. Every treasurer appointed as aforesaid, shall, before entering upon his duties, execute a bond, with two or more freeholders as securities, payable to the trustees of schools of the township for which he was appointed treasurer, with a sufficient penalty to cover all liabilities which may be incurred, conditioned faithfully to perform all the duties of treasurer of the trustees of schools in township range according to the laws now, or which may hereafter be in force. The security shall be approved by the trustees of schools, and the bond shall be filed with, and kept by the school commissioner of the county ; and every treasurer appointed subsequent to the first, as herein provided, shall execute bond with security as is required of the first treasurer.

SEC. 50. Whenever a township shall have become incorporated, and the bond of the treasurer approved and delivered to the school commissioner, he shall deliver over to such treasurer, who shall receipt therefor, all moneys in his hands belonging to the township ; also, all bonds, mortgages, notes and securities of every description, for money or property due or to become due the township, and all papers of every description belonging or in anywise pertaining to the rights or interest of the said township ; and the receipt of such treasurer to the school commissioner, shall be carefully preserved, and shall be evidence of the facts therein stated, as well in favor of the school commissioner as against the treasurer.

SEC. 51. Every treasurer of a township incorporated as aforesaid, shall provide himself with two well bound books, the one to be called a cash book, the other a loan book ; he shall charge himself in the cash book, with all moneys received, stating in the charge from whom and on what account received, and credit himself with all moneys paid or loaned, stating in the credit to whom paid, and on what account, or if loaned, to whom. He shall enter in the loan book, the name of every person to whom money is loaned, the amount loaned, the date of the loan, the rate of the interest, the time when payable, the names of the securities, or if real estate be taken, a description of the same. He shall also provide a book, in which he shall record the acts and proceedings of the trustees ; which book shall be at all times subject to the inspection of the trustees, and of any committee appointed by the inhabitants of the township to examine the same : *Provided, however,* That in all cases when the trustees of schools shall wish to let the funds of their township remain in the hands of the school commissioner of the county, said commissioner shall retain the same, loan it, and apply the interest as directed by this chapter.

SEC. 52. In loaning township funds and taking security therefor, treasurers shall be governed by the law prescribing and regulating the duties of school commissioners in respect to townships, except that treasurers may loan money for a shorter period than one year ; and the rights and liabilities of persons borrowing moneys from treasurers, shall be the same as though the money had been borrowed of the school commissioner. Notes, bonds, mortgages and other securities taken for money or other property, due or to become due to the trustees of schools, for the township, shall be payable to the said trustees of schools by their corporate name, and in such name, suits, actions and complaints, and every description of legal proceedings may be had for the recovery of money, the breach of contracts, and for every legal liability which may at any time arise or exist, or upon which a right of action shall accrue to the use of the corporation.

SEC. 53. The funds of townships shall be kept loaned at interest, by the treasurer, and the interest arising from the funds shall be used under the direction of the trustees in paying teachers of schools; but whenever money is paid to the treasurer, it shall be forthwith loaned, whether it consists of interest or principal, unless the interest shall be required for the use of teachers within forty days from its reception, in which case, it shall be retained for such use.

SEC. 54. The treasurer shall keep a separate account of the interest received and loaned out; and if, at the end of any year, the whole interest shall not have been applied to the support of schools, the amount not applied shall be added to the principal, and shall always thereafter be considered in all respects as principal.

SEC. 55. At every quarterly meeting, the trustees shall strictly examine all books, notes, mortgages, accounts of loans, securities, funds and papers of the corporation.

SEC. 56. On the first Monday of April and October of every year, the treasurer shall state the interest account, so as to ascertain the amount of interest then due on the funds; and the amount so found to be due shall be subject to distribution for the use of schools; and if the treasurer shall not have the amount on hand, the same shall be paid out of the first money received from the amount found to be due as ascertained in this section.

SEC. 57. When a treasurer shall resign or be removed or suspended in office, he shall pay over to his successor in office, all money on hand, and deliver over all books, notes, bonds, mortgages, and all other securities for money, and all other papers, books and documents of every description, in which the corporation may have any interest whatever, and in case of the death of a treasurer, his securities and legal representatives shall be bound to comply with the provisions of the foregoing sections; and in all cases of vacancy in his office, both of treasurer and trustee, one of the other trustees shall do his duties in regard to the necessary election to fill such vacancy, as trustee.

SEC. 58. No school shall derive any benefit from the public or town fund, unless the text books used in said schools, shall be in the English language, nor unless the common medium of communication in said schools, shall be the English language: *Provided*, That this section may not apply to those who may desire to study any foreign language in said school, for the purpose of learning the same.

SEC. 59. Trustees of schools shall have power to lay off the township into school districts, suited to the wishes and convenience of a majority of the inhabitants in each district, distinctly defining the same by boundaries, and name or number; to purchase libraries for the use of schools; to provide for the safe keeping of all funds and property of the township; to purchase and hold real estate in their corporate name for the use of the inhabitants of the township, whereon to erect school houses, such real estate being first selected as provided in the sixtieth section of this chapter; to adopt by-laws, directing the mode of conducting schools, and defining and regulating the powers and duties of all officers and agents of the corporation, wherein they are not regulated by this chapter; and to do and perform all other acts necessary to the support and maintenance of common schools in their townships, in conformity with the provisions of this chapter: *Provided*, That school districts may be created out of parts of two or more townships, when the interest of the inhabitants will be promoted thereby, in which case the trustees of townships interested, shall act in conjunction in the formation of such districts.

SEC. 63. In closing the schedule, the teacher shall make a list of the names of the scholars attending the school, then add together the number of days which each scholar has attended, and set down the total number of days at the bottom of the schedule; and when the schedule is thus closed, the teacher shall certify to the correctness of the same.

SEC. 64. This certificate shall be, as near as circumstances will permit, in the following form:

I certify that the foregoing schedule of the names of the scholars therein named, residing in township _____ range _____, is correct.

Given under my hand, this _____ day of _____ in the year of our Lord, one thousand eight hundred and _____

C. D., *Teacher.*

SEC. 65. When the teacher shall have completed his schedule, as above provided, the directors of the school shall carefully examine the same, and after correcting all errors which they may discover, they shall make a certificate thereon, in which they shall state that they are directors of the school, that they have attended to the duties of directors, and that they have examined said schedule, and believe it to be correct, and to have been faithfully kept; and shall also state the amount due to said teacher for his services. The certificate of said directors shall be, as near as circumstances will permit, in the following form, to-wit:

STATE OF ILLINOIS, }
COUNTY OF _____ } ss.

We certify that we have performed the duties of directors, by visiting said school and superintending the same, that we have examined the foregoing schedule, and find the same to be correct; that the scholars named therein, were, at the dates of their attendance, residents of township _____ range _____ of the principal meridian, and that there is due to said teachers for instructing the scholars therein named, at the times therein mentioned, the sum of _____ dollars and _____ cents.

Witness our hands, this _____ day of _____ 184 .
E. F., }
G. H., } *Directors of said school.*
J. K., }

SEC. 66. The schedules of schools, made and certified as aforesaid, shall be delivered by the school directors, to the treasurers of the townships to which such schedules respectively relate, and the said treasurers shall, before the first Mondays of April and October in each year, make abstracts from all the schedules returned to them, showing the name of each teacher, the total number of scholars attending each school, and the total number of days taught by each teacher, to be used by the trustees in dividing the school fund.

SEC. 67. A person residing in one school district, shall be at liberty to send his or her children to a school taught in any other school district in the same township, provided the directors of the school in the district to which he sends, shall first assent thereto; but the person so sending to school in a district in which he does not reside, shall not thereby be entitled to interfere with, or in any manner to participate in, the management and control of such school; and persons residing in one township shall be at liberty to send their children to any school taught in another township; but, in such case, a separate schedule shall be kept by the teacher for each township, which, when examined and certified as re-

quired by the provisions of this chapter, shall be returned by the school directors to the treasurer of the township in which the children contained in this schedule reside.

SEC. 68. It shall be the duty of the school directors of each school district, to furnish the treasurer of the proper township, by the first Monday of October next, and by the first Monday in October, biennially thereafter, with the number of all white male children, under the age of twenty-one years, residing within the said district: *Provided*, That in townships not laid off into districts, and in townships containing not more than one school district, it shall be the duty of the treasurer of the township, to make such enumeration.

SEC. 69. School directors, or either of them, failing to make returns of the number of children in their district, according to the provisions of this chapter, or if either of them shall knowingly make a false return, the party so offending, shall be liable to a penalty, of not less than ten dollars, nor more than one hundred dollars, to be recovered before any justice of the peace within the precinct, in the name of the trustees of schools; which penalty, when so collected, shall be added to the township fund.

SEC. 70. The treasurer of each township in this State, shall, on or before the first Monday in November next, and on the first Monday in November, biennially thereafter, furnish the school commissioner with an abstract of the whole number of white children under the age of twenty years, residing in his township; and the school commissioner shall apportion the interest arising from the school, college and seminary fund, according to the number of children under the age aforesaid, and shall pay over the distributive share belonging to each township, to the respective treasurers thereof, or other authorized persons, annually; and the said school commissioner shall, at the same time, pay over to the treasurers of townships, the interest upon the township fund of such townships.

SEC. 71. The treasurer of each township shall charge himself with the amount of the county school, college and seminary fund, which he may receive from the school commissioner; shall pay to the teachers entitled to the same, their respective portions, and credit himself with all sums paid out by him; he shall also lay before the trustees of schools at their semi-annual meetings, abstracts of the returns made by the directors, as contemplated in the sixty-eighth section of this chapter, containing the number of all white children under the age of twenty years, in each school district within their respective townships, and the trustees shall make the apportionment of the interest and profits arising from the township funds, and the interest arising from the school, college and seminary funds, equally, according to the number of white children under the age of twenty years within each school district respectively; but in all cases where the inhabitants of any school district shall fail or neglect for a longer period of time than ten months in succession, to have a school kept within the limits of their district, the distributive share belonging to said district, shall be added to, and form a part of the school fund of the township, and be loaned out as other township funds are; and district funds in the hands of the treasurer, shall be loaned out for the time being, in the same manner and on the same terms that township funds are.

SEC. 72. It shall be the duty of the treasurers of townships, to lay before the trustees, at their semi-annual meetings in April and October of each year, the abstracts from all the schedules of schools returned to them, showing the name of each teacher, the total number of scholars attending each school, and the total num-

ber of days taught by each teacher, and the said trustees shall thereupon make an apportionment of the interest and profits arising from the township funds, and the interest arising from the school, college and seminary funds, equally, among the several teachers entitled to it, according to the number of white children under the age of twenty one years, residing in the respective school districts, in the township possessed of school funds.

SEC. 73. In making the above distribution, the schedules of teachers in other townships, if any such have been returned, shall be included, and the just proportion of the funds about to be distributed, shall be allowed and paid to the teacher who kept such schedule, or to the treasurer of the township in which he taught the school, for his use; but in no case shall an apportionment of interest be made to a teacher, unless his schedule shall have been kept and certified in conformity with the provisions of this chapter; nor shall he ever be allowed more than the amount agreed to be paid by the employers.

SEC. 74. If the trustees of schools of any township, shall fail or refuse to pay to any teacher the proportion of the distributive fund of said township, to which he may be entitled, said teacher may bring his action of debt against said trustees in their corporate name, in any court or before any justice of the peace having jurisdiction thereof; and if said trustees shall fail or refuse to pay whatever judgment may be rendered against them, upon the trial of such suit, within one month from the rendition of said judgment, execution may be sued out thereon, and levied upon the individual property of said trustees.

SEC. 75. The common school fund of the State, shall consist of the amount due from the State according to a statement and settlement of the account between the State and that fund, under the provisions of the act entitled, "An act to provide for the distribution and application of the interest on the school, college and seminary fund," approved on the seventh day of February, one thousand eight hundred and thirty-five; and of all funds which have been, or may be received by the State from the United States for the use or support of common schools; and also of the money added to the common school fund, which was received from the United States under the act of Congress providing for a distribution of the surplus revenue of the United States, and which was vested in bank stock by authority of the State.

SEC. 76. The State shall pay an interest of six per cent. per annum, upon the amount of the aforesaid common school fund, which shall be paid annually, on the first day of January, and be applied to the support of common schools, as hereinafter provided. The State shall also pay at the time aforesaid, an interest of six per cent. per annum, upon the amount due the college and seminary fund; which interest shall be loaned to the common school fund, and applied with the interest on the common school fund as aforesaid.

SEC. 77. On the first Monday in January in each and every year next after taking the census of the State, the auditor of public accounts shall, under the supervision of the commissioners of the school fund of the State, ascertain the number of white children in each county in the State, twenty years of age, and under, and shall thereupon make a dividend to each county, of the interest due upon the school, college and seminary fund, in proportion to the number of persons in each county of the age aforesaid, and issue his warrant to the treasurer, for the amount due each county, in favor of the school commissioner, or other authorized agent thereof; and dividends shall be made according to the proportions ascertained to be due to each county annually thereafter, until another census shall have

been taken, and then apportionments shall be made and continued as aforesaid, according to the last census.

SEC. 78. The money received by school commissioners upon auditor's warrants, issued according to the foregoing section, shall be divided among the several townships and fractional townships in each county, according to the number of white children in each township, under the age of twenty years, agreeably to the provisions of this chapter: when there is a county school fund in the hands of any school commissioner, it shall be loaned, and the interest applied as provided in this section.

SEC. 79. The interest accruing upon township funds, and all profits arising from the use of township lands, and all rents received, shall be applied to the support and maintenance of common schools, which may be organized and kept according to law.

SEC. 80. School commissioners shall be allowed and paid out of the township funds, three per cent. upon the amount of sales, for their services in receiving and recording petitions for the sale of school lands, advertising, selling, making reports, taking security for the purchase money, or loaning purchase money, in case it is paid; for receiving money which has been loaned and re-loaning the same, two per cent. upon the amount re-loaned; and two per cent. upon the amount of all sums distributed and paid to teachers or trustees, for the support of schools. And the compensation of treasurers of townships, shall be the same as that allowed school commissioners for the same services; but the two per cent. for receiving and re-loaning money, shall not be allowed, unless there has been an actual payment, and re-loaning to another and different person: *Provided, however,* That trustees of schools shall have the right, and it is made their duty, to reduce the compensation of treasurers, if, in their opinion, the compensation herein allowed, is more than is reasonable. The trustees shall, in all cases not herein otherwise provided for have power to regulate the fees and compensation of treasurers.

SEC. 81. If any school commissioner of a county, trustees of schools, treasurer, or any other person entrusted with the care, control, management or disposition of school funds belonging to the State, or to any county or township, or to any school district, or which may be held for the use of any schools, shall convert any such funds, or any portion thereof, to his own use, with intention to defraud the State, county, township or school out of the same, he shall be liable to indictment, and upon conviction, shall be fined, in not less than double the amount of money converted, and imprisoned in the county jail, not less than one, nor more than twelve months, at the discretion of the court.

SEC. 82. Trustees of schools shall be liable, jointly and severally, for the sufficiency of securities taken from treasurers, and in cases of judgment against treasurers and their securities, for or on account of any default of such treasurers, on which the money shall not be made, for want of sufficient property whereon to levy executions. Actions on the case may be maintained against the trustees, jointly or severally, and the amount on such judgment not collected, shall be recovered with costs.

SEC. 83. The real estate of school commissioners and their securities, shall be bound for the satisfaction and payment of all claims and demands against such treasurers and commissioners as such, from the date of issuing process against them, in actions or suits brought to recover such claims or demands until satisfaction thereof be obtained; and no sale or alienation of real estate by any commissioner, treasurer or security as aforesaid, shall defeat the lien created by this section; but all and

singular such real estate, held, owned or claimed as aforesaid, shall be liable to be sold in satisfaction of any judgment which may be obtained in such actions or suits.

SEC. 84. On the first Saturday of May next, and the same day annually thereafter, the inhabitants, legal voters of the different school districts of this State, may meet together at some central place in their respective districts, for the purpose of voting for or against levying a tax for the support of schools, of building and repairing school houses, or for other school purposes, or to pay existing debts, contracted for other school purposes before that time, in said districts. The directors shall give ten days' notice of such meeting, by posting up notices in four public places in the district, setting forth therein the time, place, and object of such meeting. And if the meeting be not convened on that day, it may be held upon any other day before the first day of June, upon like notice being first given, if the inhabitants or directors think proper.

SEC. 85. The inhabitants, when convened as above provided, shall organize by appointing one of their number chairman, and another secretary. They shall then determine by vote, in such manner as they may choose: *First*, whether they will tax themselves for the support of schools and other purposes before named, in the district, or not. If two-thirds shall vote for a tax, they shall agree upon the amount to be raised for the current year, not exceeding fifteen cents on the one hundred dollars, for school purposes. The secretary shall keep a true record of the proceedings of such meeting, which shall be certified and signed by the chairman and secretary, and filed and preserved by the treasurer of the township. The treasurer shall make and certify to the clerk of the county commissioners' court of the county, by the first day of June next thereafter, a correct abstract of the votes, and the amount of money voted to be raised; and said clerk shall compute each man's tax in said district, taking as a basis the total amount of taxable property returned for said district by the county assessor for that year, and cause the same to be set upon the tax-book to be delivered to the county collector for that year, in a separate column, against each man's name, or parcel of taxable property, as it appears on said collector's book, to be collected in the same manner as State and county taxes; and when collected, to be paid over to the treasurer of the township, and credited in a separate account on his book.

SEC. 86. All the township treasurers, under the direction of the trustees and school commissioners in this State, having on hand any State bank or bank of Illinois paper, or other depreciated funds, are hereby authorized to sell the same for their cash value, and adjust their accounts accordingly. And all such sales heretofore made by such commissioner or trustees in any county of this State, are hereby declared legal and valid.

SEC. 87. No justice of the peace, constable, clerk of a court or sheriff, shall charge any costs in any suit where any agent of any school fund suing for the recovery of the same, or of any interest due thereon, is plaintiff, and shall be, from any cause, unsuccessful in such suit.

SEC. 88. An act entitled "An act making provisions for organizing and maintaining common schools," in force, July first, one thousand eight hundred and forty-one, and all other acts and parts of acts coming within the purview of this act, are hereby repealed.

SEC. 89. School commissioners appointed heretofore, shall continue in office until superseded according to the provisions of this chapter, and their duties, responsibilities and powers shall be governed by the provisions herein named. Trus-

tees of school lands, heretofore appointed by county commissioners' courts, and trustees of schools heretofore elected shall also continue to discharge the duties of their appointment, until trustees of schools are elected under the provisions of this chapter. Townships heretofore incorporated, shall, without any further action or proceeding, be considered as incorporated under the provisions of this chapter, and the trustees and other officers shall continue to discharge their duties till suspended by appointment or election; but the rights, powers and duties of all such officers shall be regulated by the provisions hereof. All school districts heretofore laid off shall remain as if they had been laid off under the provisions of this chapter, and all school directors heretofore appointed shall continue in office as if they had been appointed by the provisions of this chapter, until by election as provided in this chapter. Leases of school lands shall remain valid, and be executed according to the laws under which they were made. Common school lands, valued and offered for sale, and remaining unsold, shall be sold upon terms prescribed by this chapter. All contracts made under the laws hereby repealed, shall remain valid; and all rights, remedies, defences and causes of action existing, or which may hereafter exist or arise under or by virtue of said repealed laws, shall continue and remain valid, and shall be enforced, notwithstanding the repeal of said laws, unless cancelled according to the provisions of this chapter.

SEC. 90. The trustees of schools in their respective townships, shall have the same power to examine teachers, as is given to school commissioners in the twelfth section of this chapter; and it shall be their duty, on application, to examine any person proposing to teach a school in their own township, either by themselves, or by associating with them some competent person; and if, on examination, a majority of said trustees shall find such person to possess the qualifications named in the twelfth section of this chapter, and that he or she is of good moral character, shall grant to such person a certificate to that effect, which shall entitle such teacher to a due proportion of the school funds to be distributed in such township.

APPROVED: February 26, 1845.

[AMENDED:—See Chapter 54, title "INTEREST;" Also, Appendix, Acts Nos. 21 and 33.]

CHAPTER XCIX.

SHERIFFS AND CORONERS.

SECTION

1. Sheriffs, when elected, to be commissioned.
2. To give bond, and take oath of office.
3. Bond and oath to be filed and certified.
4. If sheriff or coroner do not qualify, &c., office to be vacant, and filled as other vacancies.
5. General duties of sheriffs and coroners.
6. Powers as conservators of the peace.
7. Sheriff to attend circuit court; to have custody of court house and jail.
8. Sheriff to perform duties of office until his successor is elected and qualified; to deliver papers, &c., to successor.

SECTION

9. May, after expiration of term, collect fee bills, &c.
10. Sheriff may appoint deputy; when sworn, deputy may perform duties of sheriff; sheriff to be liable for his acts.
11. Sheriff and coroner forbidden to purchase property sold by them on execution.
12. No sheriff or deputy to act as county treasurer; treasurer not to act as sheriff or collector.
13. If sheriff shall have failed to pay over money, on previous execution, second execution directed to coroner.

SECTION

14. Sheriff, when to settle with county commissioners' court for taxes collected; to settle with auditor of public accounts; if in arrears, not to be commissioned on re-election; *quietus*.
15. Sheriff or coroner failing or refusing to pay over money collected; what proceedings had against them.
16. Failing to pay over county funds collected, how proceeded against.
17. Failing to settle with auditor of public accounts, how proceeded against; to pay ten per cent. damages.
18. If office of sheriff become vacant, coroner to perform his duties until filled; venue not to be changed on account of interest, &c., of sheriff; but coroner to perform duties.
19. Duty of coroner respecting inquests on dead bodies found.
20. When coroner's jury assembled, foreman to be appointed and oath administered; duty of jury to inquire cause of death.

SECTION

21. Witnesses, coroner may compel attendance of; when evidence to be reduced to writing, and witness required to appear; penalty for refusing to recognize; coroner to return verdict into the circuit court.
22. Duty of coroner to apprehend suspected persons.
23. Burial of the dead; disposition of his effects.
24. If coroner be absent, magistrate may perform his duties.
25. Execution of deeds, by sheriff; before whom to be acknowledged.
26. If sheriff go out of office or die, duties, how performed, and business, how finished.
27. If sheriff, coroner, &c., refuse to pay over money under one hundred dollars, suit may be brought before justice of the peace; securities, how liable; further proceedings.
28. Judgment against sheriff; appeals allowed in certain cases.

SECTION 1. Whenever any sheriff or coroner shall be elected for any county in this State, and return of the votes made to the secretary of State, the Governor shall commission such sheriff or coroner to continue in office for two years, which commission shall be transmitted by the secretary of State, to the clerk of the circuit court of the proper county, whose duty it shall be to give immediate notice to such sheriff or coroner, of the receipt of his commission.

SEC. 2. Every sheriff or coroner elected as aforesaid, on receiving notice of his commission, shall, within thirty days thereafter, enter into a bond with the people of the State of Illinois, with good and sufficient security, to be approved by the judge of the circuit court of his county, at the term next after the date of such bond, the sheriff in the penal sum of ten thousand dollars, and the coroner in the penal sum of two thousand dollars, conditioned for the faithful discharge of all the duties required or to be required of him by law, as sheriff or coroner, (as the case may be;) and shall also, at the time of giving such bond, take and subscribe, before the clerk of the circuit court, the several oaths required by law; and an oath for the faithful performance of the duties of his office: *Provided*, That if no circuit court be held within thirty days after notice of such commission, as aforesaid, the clerk may approve the bond required aforesaid; which bond, in that case, shall be good and valid, until the end of the next succeeding circuit court.

SEC. 3. The oaths so taken, and bond given by any sheriff or coroner as aforesaid, shall be filed and recorded by the clerk of the circuit court; and the taking and subscribing of the oaths shall be certified by him on the back of the commission, and a certified copy of such bond, under the seal of the court, shall be evidence in all courts in this State.

SEC. 4. If any sheriff or coroner, elected as aforesaid, shall neglect or refuse to enter into bond and take the oaths above required, within the time above specified, or if any bond, approved by the clerk as aforesaid, shall be disapproved by the judge of the circuit court, and such sheriff or coroner shall not, during the term of the court, procure such security as the judge shall approve, in all such cases, the office shall be deemed vacant; and the clerk shall immediately notify the Governor of such vacancy; and it shall be the duty of the Governor to issue a writ of election, and direct the time of holding the same; which election shall be proceeded in, as in other cases of election.

SEC. 5. It shall be the duty of every sheriff and coroner, when qualified as aforesaid, to execute and return all writs, warrants, process, orders and decrees of every description, that shall or may be legally directed and delivered to him, within the limits of his county, under pain of contempt of the court from which such writ, warrant, process, order or decree may have issued; and for the service of such process, and for keeping the peace, such sheriff or coroner may call to his aid the power of the county when necessary.

SEC. 6. The several sheriffs and coroners shall be conservators of the peace in their respective counties, and keep the same, by causing all offenders, on view, to be committed to prison, and to enter into recognizance to keep the peace, and appear at the next circuit court, and shall return all such recognizances to the next circuit court; and it shall also be the duty of all sheriffs and coroners to suppress all riots, routs, affrays, fightings and all crimes and breaches of the peace, and to do and perform all such other duties, as are, or may be required of them by law.

SEC. 7. It shall be the duty of the sheriff of each county, to attend all circuit courts, and courts of county commissioners, in his county, at the terms and sessions of such courts; and he shall have the custody and care of the court house and jail.

SEC. 8. Whenever the office of any sheriff or coroner shall have expired by the constitutional term of two years, it shall be lawful for the same person, whether re-elected or not, and his deputy or deputies, to continue to perform all the duties of sheriff, until his successor shall be commissioned and qualified, as is hereinbefore required. And whenever any sheriff shall go out of office, and his successor in office shall be qualified as aforesaid, the clerk of the circuit court shall issue a notice in writing, stating that the sheriff elect has been commissioned and qualified according to law; which notice shall be served by the new sheriff, and the former sheriff shall thereupon transfer and deliver to the new sheriff, all the writs, process and papers belonging to his office except as is hereinafter excepted; and also the possession of the court house and jail of his county; and shall take from the new sheriff a receipt, specifying the papers so delivered over, and the prisoners in custody, if any; which receipt shall be sufficient indemnity to the person taking the same.

SEC. 9. Every sheriff going out of office, at the expiration of his term, and having any writ of *feri facias*, or fee bill, which he may have levied, but not collected, or any tax list uncollected, shall be, and is hereby authorized to proceed on and collect such execution, fee bill or tax list, in the same manner, as if his term of office had not expired; and any sheriff who has heretofore, or who may hereafter pay and advance the taxes assessed against any person, may proceed to collect the amount of money, so paid and advanced, in the same manner, to his own use, as if no payment had been made.

SEC. 10. It shall be lawful for any sheriff to appoint a deputy or deputies; which appointment shall be in writing, filed in the office of the clerk of the circuit court, and entered of record; and any deputy when so appointed, and having taken and subscribed the several oaths required to be taken by the sheriff, shall be, and is hereby authorized to perform any and all of the duties required of the sheriff in the name of the sheriff; and the sheriff shall be liable for any neglect or omission of the duties of his office, when occasioned by any such deputy, in the same manner as for his own personal neglect or omission. And any bond or security taken by any sheriff from his deputy, to indemnify such sheriff, shall be good and available in law.

SEC. 11. No sheriff, deputy sheriff or coroner shall become the purchaser, nor procure any other person to become the purchaser for him, of any property, real or personal, by him exposed to sale by virtue of any execution or other process; and all such purchases made by any sheriff or coroner, or by any other person in his behalf, shall be absolutely null and void.

SEC. 12. No sheriff or deputy sheriff shall be eligible to the office of county treasurer; nor shall any county treasurer be permitted to act as deputy sheriff or collector.

SEC. 13. The clerk of the circuit court in any county in this State, on the application of the plaintiff in any judgment on which an execution can properly be issued, and an affidavit being filed by such plaintiff, his agent or attorney, that the sheriff has failed to pay over money collected by him on any previous execution in favor of the same plaintiff, or any other person, on demand made therefor by the plaintiff in such previous execution, his agent or attorney to issue execution on such judgment, directed to the coroner of the county; who shall be authorized and required to perform all duties in relation to said execution, which the sheriff is authorized and required to perform, where the execution is directed to him.

SEC. 14. It shall be the duty of each and every sheriff in this State, to make a settlement with the county commissioners' court of his county, for the taxes and moneys by him collected, or due the county, at the June term of such court, annually; and he shall settle and account with the auditor of public accounts, for all taxes and public moneys due the State, as required by law. And if any person shall hereafter be elected sheriff of any county in this State, who has been sheriff of any county of this State, and who shall, at the time of his election, be in arrear to the State or county for taxes, or other public money, such person shall not be commissioned: and where any such former sheriff shall be elected, and shall not, within thirty days after his election, produce to the Governor a *quietus* from the proper officer of his county, and from the auditor of public accounts, for all moneys or revenue with which he shall be, at the time, chargeable, or a certificate of his having tendered the amount, the Governor shall order a new election, as in case of neglect to qualify, or refusal to serve.

SEC. 15. If any sheriff or coroner shall neglect or refuse to pay over any money collected by virtue of any execution, process or fee bill, to any person entitled to receive the same, or shall wilfully neglect the duty of his office, to the prejudice or injury of any person or persons, such person or persons may prosecute the bond of such sheriff or coroner; and the same proceedings shall be had thereon as in other cases of bonds for the performance of covenants; and after judgment had, any person injured, and who would be entitled to sue on said bond, on application as aforesaid, may obtain a writ of inquiry of damages on such judgment; and in every case when damages shall be assessed, execution shall be issued for the amount of such damages and costs, and collected for the use of the injured party; or upon the failure of any sheriff or coroner after demand made, to pay over any money by him collected, by virtue of any execution, process or fee bill, to any person entitled to receive the same, such person may proceed against such sheriff or coroner, in a summary way, before the circuit court, by motion, upon giving to such officer ten days' notice of the application, and recover the amount so neglected to be paid, with ten per cent. damages thereon, for such detention, and shall have execution therefor: *Provided*, That in all such cases, if the sheriff shall pay or satisfy the amount claimed by the

party prosecuting, with costs, under the direction of the court, before final judgment, or in any subsequent prosecution before inquest found, all further proceedings on such bond or judgment, shall be stayed by the court.

SEC. 16. If any sheriff shall fail to settle with and pay over to the county commissioners' court according to law, any money which he may have collected or received, belonging to such county, it shall be lawful for the county commissioners of such county to proceed against such sheriff, in a summary way, before the circuit court, by motion, upon giving such sheriff ten days' notice of such application, and recover the amount due such county, with ten per cent. damages thereon, for such neglect, and shall have execution therefor; or may proceed against such sheriff and his securities for such delinquency, upon his bond of office.

SEC. 17. If any sheriff shall fail or neglect to settle with the auditor of public accounts, according to law, and pay over all money due to the State from such sheriff, it shall be the duty of the auditor to proceed against such sheriff, by motion, either in the supreme court or in the circuit court of the county where such sheriff shall reside, upon giving to such sheriff, if the motion be made in the supreme court, twenty days' notice of the application, or ten days' notice, if made in the circuit court: and recover judgment against such sheriff for the amount he may owe the State, with ten per cent. damages thereon, and have execution therefor: or may proceed in either court aforesaid, against such sheriff and his securities, upon his bond of office.

SEC. 18. In case of a vacancy in the office of sheriff, by death, resignation, removal or otherwise, the coroner shall do and perform all the duties pertaining to the office of sheriff, receive the proper fees and emoluments, and be liable to the same penalties and proceedings, as if he were sheriff, until such vacancy shall be filled, by the election and qualification of a new sheriff; and it shall be the duty of the several coroners in this State, to execute all process within their respective counties in all cases where just exception can be taken to the sheriff or his deputy or deputies, or where there is no sheriff; and in all cases, upon affidavit made and filed with the clerk of any court of record in this State, of the partiality, prejudice, consanguinity, or interest of the sheriff, or of the deputy of the sheriff, of any county where suit is about to be brought, or shall have been commenced, it shall be the duty of the clerk to issue and direct original or other process in the suit, to the coroner, who shall execute the same and attend to the suit throughout, in the same manner as the sheriff would or ought to have done. And hereafter, the partiality, prejudice, consanguinity or interest of any sheriff, or of any deputy sheriff, shall not be cause for a change of venue, but the coroner shall perform the duties as above prescribed; or if there shall be no coroner, an elisor, to be appointed by the clerk, shall supply the place of the sheriff, in like manner as the coroner is hereby required to do.

SEC. 19. Every coroner, as soon as, and whenever he shall be informed or know of the body of any person being found dead (supposed to have come to his or her death by violence, casualty or any undue means,) shall forthwith proceed to summon a jury of twelve good and lawful men, of the neighborhood wherein said dead body shall be found lying or being, to repair at such time as he shall direct, to the place as aforesaid, and to inquire (upon a view of said body,) how and in what manner, and by whom or what he or she came by his or her death; and in case any juror or jurors, so summoned, shall fail, neglect or refuse to attend, the said

coroner shall summon another or others, from among the bystanders, to serve in his or their place. And every person so summoned as a juror, and failing, neglecting or refusing to appear at the time and place required, without having a reasonable excuse for such failure, &c., shall forfeit the sum of two dollars to the county, to be recovered before any justice of the peace of said county, on the certificate of the coroner, that he failed, &c., without a reasonable excuse to him made therefor.

SEC. 20. As soon as the said jurors shall have assembled at the place where the said dead body may be lying or being, the coroner shall designate one of the number as foreman, and administer to him an oath in the following form, to-wit: "You, as foreman to this inquest, do solemnly swear" (or affirm, as the case may require,) "that you will diligently inquire, and true presentment make, how, in what manner, and by whom or what, the body which here lies dead, came to its death; and that you will deliver to me, the coroner of this county, a true inquest thereof, according to such evidence as shall be given you, and according to the best of your knowledge and belief, so help you God." And to the other jurors, one as follows, to-wit: "The same oath which A. B., your foreman, has just now taken on his part, you and each of you do solemnly swear," (or affirm, as the case may require) "to keep on your respective parts, so help you God." And it shall be the duty of the jurors, as sworn as aforesaid, to inquire how, in what manner, and by whom or what, the said body came to its death, and of all other facts of and concerning the same, together with all material circumstances in anywise related to, or connected with the said death, and make up and sign a verdict, and deliver the same to the coroner.

SEC. 21. The said coroner shall have power to summon, or cause to be summoned, and compel the attendance of all such witnesses whose testimony may probably be requisite to the proving of any fact or circumstance relating to the object of such his inquest, and to administer to such witnesses the proper oath. And if the evidence of any witness shall implicate any person or persons, as the unlawful slayer of the person over whom the said inquisition shall be held, the said coroner shall reduce said evidence to writing, and cause the same to be subscribed by the witness so giving it; and shall further recognize any such witness in such sum as he may think proper, to be and appear at the next term of the circuit court for the said county, there to give evidence of the matter in question, and not depart without leave. And if any witness shall refuse to enter into such recognizance, it shall be the duty of the said coroner to commit the witness so refusing to the common jail of the county, there to remain until the next term of the circuit court: and the coroner shall carefully seal up and return to the clerk of the circuit court for the county, the verdict of the jury, the evidence so taken and subscribed, and the recognizances, &c.; and it shall be the duty of the clerk to carefully file and preserve the same.

SEC. 22. If, at any inquisition held under the authority of this chapter, any person or persons shall be implicated with the unlawful slaying, or with the aiding and assisting in the unlawful slaying of the body in question, it shall be the duty of the coroner to apprehend and commit, or cause to be apprehended and committed, him, her or them, to the common jail of the county, there to remain until discharged by due course of law.

SEC. 23. The coroner, as soon as the verdict of the jury shall have been rendered, shall take immediate measures to bury the body which may have been the object of the inquest; the expense attending the burial to be paid out of the deceased person's estate, if sufficient there be, if not, by the county. And if there shall

be found on or about the said body, any money, papers, goods or other valuable thing or things, the said coroner shall, giving ten days' notice of the time and place, proceed to sell the same, if goods, and deposit the proceeds of such sale, together with all papers and money so found, in the county treasury, (taking the treasurer's receipt therefor) there to remain, subject to the order of the legal representatives of the said deceased, if claimed any time within five years thereafter; and should such money or other thing, not be claimed within the time aforesaid, then the same to vest in the county: *Provided*, That nothing herein contained, shall prevent the whole or any part of said moneys being liable to the payment of the coroner's fees or funeral expenses: *Provided, however*, This section shall not extend to any person, except he shall have been a stranger or a non-resident.

SEC. 24. In case of the absence of the coroner, any magistrate, being certified of any dead body, as before mentioned, shall be authorized to perform the duties of the coroner, as pointed out by this chapter.

SEC. 25. When a sheriff or other officer shall execute a deed for lands or tenements, which he may have sold by virtue of any execution, it shall be his duty to acknowledge the same before the clerk of the court whence it issued, or in open court, unless it issued from the supreme court, in which case the acknowledgment may be made before the clerk of any county commissioners' or circuit court: and the clerk's certificate of such acknowledgment shall be deemed *prima facie* evidence of the execution thereof.

SEC. 26. When any sheriff or other officer shall go out of office, not having made a deed for any lands or tenements, which he may have sold, by virtue of any execution, it shall be lawful for him, his successors in office, or if he be dead, for his successor, his executor or administrator, to make and acknowledge a deed for the same; and in no case shall the death of a sheriff take away or suspend the powers of the deputy sheriff of such sheriff; but such deputy may do all acts and things which he could have done, had the sheriff remained in full life, until his powers be superseded by the appointment of a principal sheriff.

SEC. 27. If any sheriff, coroner or other officer, shall fail, on demand made by the complainant, his executors, administrators or lawful attorney, to pay over any money collected by virtue of any execution, process or fee bill, not exceeding one hundred dollars, it shall be lawful for the party so aggrieved, or by his lawful attorney, to commence an action against such sheriff, coroner or other officer, and his securities, by summons, before any justice of the peace; and if, upon hearing the case, it shall appear to such justice of the peace, that money has been collected upon such execution, process or fee bill, and not paid over to the party entitled to the same, on demand made as aforesaid; and if it shall appear further, that the defendant or defendants sued with the sheriff or other officer, are his securities, by the production of the original bond or a certified copy thereof, of the sheriff, coroner or other officer, under the hand and seal of the clerk of the county commissioners' court, the said justice shall proceed to render judgment against said defendants for the amount so received by said sheriff or other officer, belonging to the plaintiff, with ten per cent. interest thereon.

SEC. 28. And upon rendition of such judgment, execution, when application is made by the plaintiff, or his or her agent or attorney, shall issue forthwith against such sheriff or other officer and his securities, as in other cases; subject, however, to be appealed by either party, under the same rules and regulations as is provided for in other cases of judgments of justices of the peace.

CHAPTER C.
SHOWS AND JUGGLERS.

SECTION

1. No shows to be exhibited, or tricks, &c., performed, unless free of charge; until county commissioners' court grant license; forfeiture for neglecting.

SECTION

2. Justices of the peace to issue *capias* for offender, on the complaint, on oath, of county commissioner, treasurer or any citizen of a county.

SECTION 1. No person or persons shall be permitted to exhibit any shows, wax figures, or perform any feats, such as circus riding, or exhibitions, or any thing of the like nature, or perform any tricks, such as are played by persons generally known by the name of thimble players, rope and wire dancers, slight of hand, with cards, or cups and balls, unless the same be shown and performed by such person or persons without fee, charge or compensation therefor, either directly or indirectly; and if any person or persons shall wish to show, exhibit or perform, as above stated, and charge therefor, he or they shall previous thereto, apply to the treasurer of the county, who shall direct what sum shall be paid therefor, not less than five, nor more than one hundred dollars, for the term of time agreed on, which shall not exceed two weeks in the county; and on payment of the sum required, the treasurer shall give a receipt therefor, which shall be presented to the clerk of the commissioners' court of the county; and on payment of fifty cents fee to said clerk, he shall give a permit to such person, to show, exhibit and perform as aforesaid, for the time agreed on by the treasurer, and the said clerk shall file said receipt and charge the treasurer with the sum received into the county treasury: and if any person or persons shall exhibit any shows, wax figures, circus riding performances, or any such thing, or perform and play any such tricks as above described, and shall charge and exact, or in any manner receive compensation therefor, and shall not have obtained a permit so to do, such person or persons shall forfeit and pay, for each and every such offence, any sum not less than ten, nor more than one hundred dollars, to be recovered by action of debt before any justice of the peace of the county, in the name of the county commissioners, or county treasurer, for the use of the county, with costs of prosecution.

SEC. 2. If complaint be made on oath, in writing, by a county commissioner, treasurer or any citizen of the county, that any person or persons, (naming them) are in the county; and to the best of his belief, violating the law, in the particulars above stated, it shall be the duty of the justice to issue a *capias* or warrant, and if affidavit be not made, a summons shall be issued.

APPROVED: March 3, 1845.

CHAPTER CL.

SLANDER.

SECTION

1. What words charging another with commission of crime, deemed slanderous and actionable.

SECTION

2. Charging person with swearing falsely, whether in judicial proceeding or not, actionable.

SECTION 1. If any person shall falsely use, utter or publish words, which in their common acceptation shall amount to charge any person with having been guilty of fornication or adultery, such words so spoken shall be deemed actionable, and he, she or they, so falsely publishing, speaking or uttering the same shall be deemed guilty of slander.

SEC. 2. It shall be deemed slander, and shall be actionable, to charge any person with swearing falsely, or with having sworn falsely, or for using, uttering or publishing words of, to or concerning any person, which in their common acceptation, amount to such charge, whether the words be spoken in conversation of, and concerning a judicial proceeding, or not.

APPROVED: March 3, 1845.

CHAPTER CII.

STEAM BOATS.

SECTION

1. How boats on rivers of this State, shall be officered and furnished; regulations in ascending and descending.
2. When boats meet in a narrow place, what to be done; in night time, descending boat to keep main channel.
3. Duty of masters and officers; rules and regulations for safety of boat.
4. Responsibility of masters and owners; causing death carelessly, deemed manslaughter.

SECTION

5. Racing forbidden; liability of owners and officers, to punishment, and for damages.
6. Landing passengers, regulations respecting.
7. Carrying gunpowder, under what restrictions and regulations; penalty.
8. Punishment for putting gunpowder on boats, without informing officers.
9. Copies of this chapter to be posted up on boats; penalty for omitting.

SECTION 1. It shall be the duty of the owners of steamboats navigating the Mississippi, Ohio, Wabash, Illinois, and other rivers and lakes within the jurisdiction of this State, to have a competent master, officers and crew on board, and to have a substantial and sufficient engine, boilers or boiler, and to have the same at all times in good and safe order and condition, and have the vessel supplied with all necessary boats, tackle and furniture, and in every respect seaworthy. In ascending and descending navigation, said boats shall conform to the following regu-

lations : The descending boat shall keep the shore or bar she may be on, until the ascending boat passes ; and when both boats are running, the ascending boat shall keep the middle of the channel, or in the deepest water, and in all cases where it is practicable, leave room for the descending boat to pass on either side.

SEC. 2. When two boats shall meet in a contracted part of the river, or in any narrow or intricate channel, both boats shall stop their engines, or work them very slow, until they pass each other ; and in the night time, the descending boat shall not take any of the small chutes, but shall keep the main channel in order to avoid the ascending boats.

SEC. 3. It shall be the duty of the masters and officers of all steamboats, to keep their vessels at all times well and steady trimmed, and particularly, in coming to and departing from shore ; and for that purpose, the passengers and all others on board the boat, shall strictly obey the directions of the master or officers on watch, and keep the place and position they may direct, and under such pecuniary penalties as the rules and regulations of the boat in that behalf shall impose ; which rules and regulations shall be constantly kept up in at least five conspicuous and different parts of the boat.

SEC. 4. The master and owners shall be severally and jointly responsible for damages which any person may sustain by any neglect or refusal to comply with the requisitions of the foregoing sections. And moreover, if any loss of life shall ensue from any such neglect and refusal, the officers on watch, and conducting the boat for the time being, shall be deemed guilty of the crime of manslaughter, and upon conviction thereof, shall be punished accordingly.

SEC. 5. It shall not be lawful for steamboats to run races, the one against the other ; and the owners and officers severally and jointly shall be liable and responsible for all damages which any one may sustain from any accident or casualty which may happen during said race. And moreover, in case of loss of life or lives in consequence of said racing, the master of the boat, or person or persons having the command thereof for the time being, shall be deemed guilty of a high crime and misdemeanor, and upon conviction thereof shall be liable to imprisonment in the penitentiary of the State, for any term not exceeding ten years.

SEC. 6. In landing passengers from steamboats, the master shall cause the vessel to be brought to shore whenever practicable and convenient, and especially in cases where females or children are to be landed ; and whenever it is impracticable or decidedly inconvenient to bring the boat to the shore, they may land the passengers in good, sufficient and comfortable boats, which shall be at all times kept for that purpose, and managed by a sufficient number of civil, competent and careful men ; and during the time of disembarking from the steamboat into the small craft, and of leaving the vessel, the engine shall be stopped and the speed of the vessel checked. And any neglect or refusal to comply with any of the requirements of this section, shall subject the owners and master of the boat to the payment of all damages that may result to any person or persons, from such neglect or refusal ; and in the event of loss of life thereby, the master or other officer in command of the boat for the time being shall be deemed to be guilty of a high misdemeanor, and on conviction thereof, shall be punished as provided for in the foregoing section.

SEC. 7. It shall be the duty of the master and officers of any steamboat carrying gunpowder as freight, to store the same in the safest part of the vessel, and separate and apart from articles liable to spontaneous combustion ; and where, in discharging the cargo, it will not be necessary to carry any lighted candle, lamp or flambeau ;

and all boats carrying gunpowder as freight, shall have printed cards, stating the fact, placed in the cabin and in other conspicuous parts of the boat, so as to give notice to the passengers. And the master and officers, failing to comply with the provisions of this section, shall forfeit one hundred dollars for every time the same shall be so neglected, which may be recovered by action of debt, by and for the use of any person who may sue for the same, before any justice of the peace in this State; and shall moreover be liable for all damages which may happen to any person by reason of the failure.

SEC. 8. It shall not be lawful for any person or persons to put or keep any gunpowder on any steamboat without first giving the master or officers notice thereof; and any person or persons so offending, shall be liable to pay a sum of one hundred dollars to and for the use of any person who may sue for the same, in an action of debt before any justice of the peace in this State; and moreover, the person or persons so offending, shall be liable for all damages which may happen to any person thereby.

SEC. 9. Copies of this chapter shall be printed and put in frames, and kept publicly placed in the cabin and steerage of each steamboat navigating the Mississippi, Ohio, Wabash, Illinois and other rivers and lakes within the jurisdiction of this State; and a failure to comply with these provisions, shall subject the master and owners to a penalty of one hundred dollars for each day the same shall be omitted, to be recovered in an action of debt before any justice of the peace by and for the use of any person who may sue for the same.

APPROVED: March 3, 1845.

CHAPTER III.

SURVEYORS.

SECTION

1. County surveyors, when elected; term of office.
2. Surveyors to be commissioned.
3. Surveyors to be sworn.
4. Duty of county surveyor.
5. May appoint deputies, who shall be sworn.
6. Chairman, to be employed and sworn.
7. Surveys, how made; perpetuating surveys; to

SECTION

- furnish proprietor with field notes; to keep a record of his surveys; certified copies of such record, to be *prima facie* evidence.
8. Records of surveyors to be delivered to successor, penalty for refusal; act or record of surveyor not to be conclusive, but may be recovered.

SECTION 1. County surveyors shall be elected in the several counties in this State on the first Monday in August, on the expiration of the terms of those now in office and every fourth year thereafter. When so elected, they shall continue in office for the term of four years, and until their successors are elected and qualified.

SEC. 2. The election of county surveyors shall in all things be conducted, and returns thereof made to the office of the secretary of State, as provided by the chapter regulating elections; and upon such election being made, the Governor shall commission such county surveyor, to continue in office for four years; which com-

mission shall be transmitted by the secretary of State to the clerk of the circuit court of the proper county; and it shall be the duty of said clerk to give immediate notice to such surveyor of the receipt of his commission.

SEC. 3. Each and every surveyor shall, previous to his entering upon the duties of his office, take an oath that he will in all things, as county surveyor, perform the duties of his office to the best of his skill and judgment, without favor or affection; which oath may be administered by any judge, or justice of the peace, in the county to which such surveyor is appointed, and shall be indorsed on his commission.

SEC. 4. It shall be the duty of the said county surveyor to make all surveys within the bounds of his county, that he may be called upon to make, either by himself or deputy, properly authorized by him, and competent to perform the duty, within a reasonable time after application is made to him.

SEC. 5. Each and every surveyor may appoint one or more deputies to assist him in the performance of the duties of his office; each deputy shall take an oath similar to that previously taken by the surveyor himself, and the surveyor shall be responsible for the official acts of his deputy.

SEC. 6. All chainmen necessary, shall be employed by the person wanting surveying done: They shall be good and disinterested persons, to be approved by the surveyor, and they shall be sworn by the surveyor to measure justly and exactly, to the best of their knowledge.

SEC. 7. It shall be the duty of all county surveyors, previous to their making any survey, under the authority of this chapter, to furnish themselves with the field notes of the original survey of the lands which they may be called on to survey; and all surveys made by county surveyors, shall be made agreeably to the original survey of the land. For the purpose of perpetuating every survey, the surveyor shall be required to establish his corners by taking bearing trees, and noting particularly their course and distance; and where there are no trees within a reasonable distance, the surveyor shall perpetuate his corners by erecting mounds: *Provided*, That in all cases where it shall appear practicable, the surveyor shall require the person having the survey made, to furnish suitable stones; and at each and every corner made and established, a stone shall be permanently placed in the ground, and in such cases it shall not be necessary to erect mounds; and shall moreover furnish the proprietor of every tract of land, with a copy of the original field notes, of every tract of land he may survey. It shall also be the duty of each county surveyor to provide himself with a well bound book, in which he shall carefully and legibly record and note down every survey made by him, giving therein the name of the person, the survey of whose land is so recorded, and describing as near as practicable, the metes and bounds of the land, and noting the date on which the survey was made; and such record shall be subject to the inspection of every person who may think himself interested; and a certified copy thereof, under the hand of the surveyor, shall be admitted as *prima facie* evidence in any court of record in this State.

SEC. 8. It shall be the duty of every county surveyor, or other person having the official record of such surveyor in his possession, to deliver up the said record to his successor, whenever he may be applied to for that purpose; and every person who, having possession thereof, will refuse to deliver the same to such successor, when demanded, shall forfeit and pay one dollar and fifty cents for every day he may detain it after demand, to be recovered by any person who will sue for the

same, before any justice of the peace of the proper county, one-half to the use of the person suing, and the other half to the use of the county. No act or record by any surveyor or his deputy, as aforesaid, shall be conclusive, but may be reviewed by any competent tribunal, in any case where the correctness thereof may be disputed.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Act No. 7.]

CHAPTER CIV.

TRESPASS.

SECTION

1. Penalty for carrying away or injuring trees of a certain description; all other kinds.
2. Penalties, how recovered; how applied; if, when suit is instituted before a justice of the peace, title to land to be set up by defendant, cause removed to circuit court, and how.
3. If recognizance to prosecute be forfeited, jus-

SECTION

- tice shall enter judgment and issue execution; recognizance, when forfeited, to be put in suit.
4. Cutting and injuring timber, under pretence of lease of school lands, &c., how punished.
5. Penalties, how recovered, and how applied; duty of overseers of the poor to prosecute, &c.

SECTION 1. Any person who shall cut, fell, box, bore or destroy, or carry away any black walnut, black, white, yellow or red oak, white wood, poplar, wild cherry, blue ash, yellow or black locust, chesnut, coffee or sugar tree, or sapling, standing or growing upon land belonging to any other person or persons, without having first obtained permission so to do from the owner or owners of such lands, shall forfeit and pay for such tree or sapling, so cut, felled, boxed, bored or destroyed, the sum of eight dollars; and every person who shall cut, fell, box, bore or destroy any tree or sapling not herein above named and enumerated, standing or growing upon land belonging to any other person or persons, without permission as aforesaid, shall forfeit and pay for every such tree or sapling, so cut, felled, boxed, bored or destroyed, the sum of three dollars.

SEC. 2. The penalties herein above provided, shall be recoverable, with costs of suit, either by action of debt, in the name and for the use of the owner or owners of the land, or by action *qui tam*, in the name of any person who will first sue for and recover the same; the one-half for the use of the person so suing, and the other half for the use of the owner or owners of the land: *Provided*, That if, in any action that may be instituted by virtue of the provisions herein contained, before a justice of the peace, the defendant shall set up a title to the land on which the tree or trees are alleged to have been cut, felled, boxed, bored or destroyed, and shall forthwith give good and sufficient security to prosecute his claim or title to the said land to effect, within one year, or to appear and defend an action to be instituted against him within one year, by virtue of the provisions herein contained, in any court of record within the State, having cognizance thereof, and in either case to abide by and satisfy the judgment that may be given in such court; then the said justice shall proceed no further in the said cause, but shall forthwith dismiss the parties; and it shall be the duty of the said justice thereupon, to tax the

bill of costs that may have accrued before him ; and so soon as the action shall be renewed or instituted for the purpose aforesaid, to transmit the said bill, together with the recognizance to be taken as aforesaid, to the clerk of the court in which such action shall be instituted or renewed ; which costs so taxed and transmitted, shall be made a part of the judgment to be rendered as aforesaid.

SEC. 3. If the said recognizance shall be forfeited for not prosecuting, as aforesaid, the justice shall proceed to enter judgment against the defendant for the demand of the plaintiff, which shall be taken to be confessed, and execution shall thereupon issue against the defendant and his security or securities ; and if the said recognizance shall be forfeited for not appearing and defending, or not abiding by and satisfying the judgment that shall be given in the court above, the party for whose benefit such recognizance was taken, may, by a writ or writs of *scire facias*, proceed to judgment and execution thereon.

SEC. 4. If any person or persons shall, under pretence of any lease or otherwise, cut, fell, box, bore or destroy any black walnut, black, white, yellow or red oak, white wood, poplar, wild cherry, blue ash, yellow or black locust, chestnut, coffee or sugar tree, or sapling, standing or growing upon any lands within the State, reserved, appropriated or intended for the use and support of schools, or for the use and support of religion, such person or persons shall forfeit and pay, for every such tree or sapling so cut, felled, boxed, bored or destroyed, the sum of eight dollars ; and if any person or persons shall cut, fell, box, bore or destroy any other tree or sapling, not herein above named and enumerated, standing or growing upon any lands within the State, reserved, appropriated, or intended for the use aforesaid, such person or persons shall forfeit and pay for every such tree or sapling so cut, felled, boxed, bored or destroyed, the sum of three dollars.

SEC. 5. The penalties provided in the preceding section, shall and may be recovered with costs of suit, either by action of debt, brought by and in the name or names of the overseer or overseers of the poor of the township in which such tree or sapling shall have been cut, felled, boxed, bored or destroyed as aforesaid, for the use of the poor of the county, or by action *qui tam*, in the name of any other person, who will first sue for and recover the same ; the one-half for the person so suing and recovering, and the other half for the use of the poor of the county in which such tree or sapling shall have been cut, felled, box, bored or destroyed ; and it shall be the duty of the overseer or overseers of the poor, on complaint made to him or them, against any person who may have cut, felled, boxed, bored or destroyed any tree or sapling, standing or growing upon any lands reserved for the uses aforesaid, within his or their township, or upon his or their view or knowledge of such trespass, forthwith to institute an action against the trespasser for the purpose aforesaid, unless an action *qui tam* shall have been previously instituted for the said trespass, in the name of some other person according to the provisions herein contained ; and the said overseer or overseers, in the settlement of his or their accounts, shall be allowed a reasonable credit for the trouble and expense of such prosecution.

APPROVED : March 3, 1845.

CHAPTER CV.

VENUE.

SECTION

1. Either party may have change of venue; for what causes to be granted; application, how made; duty of judge.
2. In case of private property taken for public uses, when damages are to be assessed, on appeal, change of venue may be granted; how applied for and granted.
3. Duty of judge in such cases.
4. Objections to appeal bond, not allowed in certain cases.
5. Change of venue, when and how obtained in criminal cases; duty of officers as to custody and removal of prisoner.
6. Changes of venue not to be granted after first term, unless cause arise subsequently; ten days' notice required.
7. In civil cases, all plaintiffs or defendants must join in application; in criminal cases, one may apply.

SECTION

8. Venue may be changed to another circuit.
9. When change is granted in vacation, what proceedings to be had.
10. If change be granted in term time, what proceedings to be had; not to be granted until after indictment found.
11. Expenses attending change of venue, how paid; if not paid, how collected.
12. When venue changed in criminal cases, witnesses and others recognized to appear to remain bound.
13. If venue in criminal case, be changed in term time, witnesses to be recognized to appear.
14. If prisoner be convicted, to be returned to county from whence the cause came; costs of his trial to be paid by such county.
15. Questions respecting regularity of proceedings, considered waived after verdict.

SECTION 1. If either party, in any civil cause, in law or equity, which may be depending in any circuit court, shall fear that he will not receive a fair trial in the court in which the action is pending, on account that the judge is interested or prejudiced, or is related to, or shall have been of counsel for either party; or, that the adverse party has an undue influence over the minds of the inhabitants of the county wherein the action is pending; or, that the inhabitants of such county are prejudiced against the applicant, so that he can not expect a fair trial, such party may apply to the court, in term time, or the judge thereof in vacation, by petition, setting forth the cause of the application, and praying a change of *venue*, accompanied by an affidavit, verifying the facts in the petition stated; and such court or judge, reasonable notice of the application having been given to the other party or his attorney, shall award a change of *venue* to some county where the causes complained of do not exist; and in all such cases where the judge is interested or is related to, or shall have been counsel for either party, the court in term time, may award a change of *venue*, as aforesaid, in its discretion, without any application from either party: *Provided*, That neither party shall have more than one change of *venue*.

SEC. 2. Whenever any appeal shall be depending in any of the circuit courts of this State, from any assessment of damages for land or other property taken under the authority of any law of this State, for the use of any rail road, canal, turnpike or any other highway, or for any purpose whatever, it shall and may be lawful for the people, or county, or other corporation, or person for whose use such land or other property is to be taken, or the person conducting the appeal in their behalf, or for the claimant or claimants, or his, her or their agents, or attorney at law, or attorney in fact, to file his, her or their affidavit in writing, stating that he, she or they verily believe that a fair and impartial trial of said appeal can not be had in the court

where the said appeal is depending, on account that either the judge of the court, or the people of the county, are interested or prejudiced against the cause of the party on whose behalf said application is made, or in favor of the cause of the other party, or for or against the parties as aforesaid.

SEC. 3. On filing such affidavit it shall be the duty of the court to change the *venue* of said cause to some convenient county, to which objections shall not be made by similar affidavit. And said appeal shall be docketed and tried in the court to which the *venue* thereof is changed, in the same manner as if it had been originally instituted there.

SEC. 4. If any objection shall be taken to any such appeal on account of any defect in the appeal bond, such objection shall not be sustained: *Provided*, The appellant, his, her or their agent or attorney shall enter into, and acknowledge such bond, with sufficient security as may be approved by said court.

SEC. 5. When any defendant in any indictment or information in any court in this State shall fear that he will not receive a fair and impartial trial in the court in which the trial is pending, on account that the judge is prejudiced, or that the minds of the inhabitants of the county, wherein the trial is pending, are prejudiced against him, such party may apply to the court in term time, or the judge thereof in vacation, for a change of *venue* by petition, setting forth the cause of such application, verified by affidavit, reasonable previous notice being given to the attorney general, or circuit attorney, prosecuting for the district, and the court or judge shall award a change of *venue* to the next nearest county where the cause complained of do not exist; and in case the applicant be in custody, or confined in jail, the court or judge shall make an order to the sheriff to remove the body of such applicant to the common jail of the county to which the *venue* is changed, and there deliver him to the keeper of said jail, together with the warrant by virtue of which he is confined, or held in custody, not more than three days next before the first day of the term of said court; and the sheriff shall obey such order accordingly, and shall indorse on such warrant of commitment, the reason of change of custody, and shall deliver such warrant, with the body of the prisoner, to the keeper of the jail of the proper county, who shall receive the same, and give to the sheriff a receipt therefor, and shall take charge of, and keep the prisoner, in the same manner as if he had originally been committed to his custody: *Provided*, There shall be but one change of *venue* in any criminal case.

SEC. 6. Changes of *venue* shall not be granted after the first term of the court at which the party applying might have been heard, unless the party so applying shall show that the causes for which the change is asked have arisen, or come to his, her or their knowledge, subsequent to the term at which the application might have been made; and shall also have given to the opposite party ten days' previous notice of his or their intention to make such application, except in cases where the causes have arisen or come to the knowledge of the party making the application, within less than ten days of making the same.

SEC. 7. In civil causes, wherein there are two or more plaintiffs or defendants, a change of *venue* shall not be granted, unless the application is made by or with the consent of all the parties, plaintiffs or defendants, as the case may be; and in criminal cases, where this application is made by a part of the defendants, and is granted, a copy of the indictment, and not the original, shall be transmitted to the court to which the change of *venue* is ordered; and the copy, certified by the clerk to be correctly made, shall stand as the original.

SEC. 8. In all cases wherein a change of venue may be awarded, for any cause whatever, the same may be awarded to the next adjoining circuit, if it may suit the convenience of the parties, as well as to any county in the circuit in which the suit was instituted.

SEC. 9. When any judge shall award a change of *venue* in vacation, in any cause, civil or criminal, he shall immediately transmit to the clerk of the court wherein the cause is pending, the petition and affidavit, together with an order in writing, ordering and directing the change of *venue*; and such clerk shall file the same in his office, and shall make out a copy thereof, and a full transcript of the record and proceedings in such cause, and shall certify and transmit the same to the proper court, together with all papers filed in the cause, and appertaining or forming part of the record, including in criminal cases, the indictment and recognizance of the party, and all witnesses; and the clerk of the court to which such cause is certified shall file the same; and the cause shall be docketed by such clerk, and shall be proceeded in and determined by the court, in all things as well before and after judgment as if it had originated therein.

SEC. 10. When any change of *venue* shall be granted in term time, the like proceedings shall be had, and duties performed by the clerks and sheriffs respectively, as in the preceding section: *Provided*, No change of *venue* shall be granted, in any criminal case, until after indictment found.

SEC. 11. The expenses attending a change of *venue*, in a civil case, shall be taxed by the clerk of the court from which the cause is certified, according to the rates established by law, for like services, and shall be paid by the petitioner, and not taken as part of the costs in the suit; and if the petitioner shall neglect or refuse to pay the same to such clerk within fifteen days after the change of *venue* is awarded, such clerk may make out a fee bill against such petitioner and his security for costs, (if any,) and deliver the same to any sheriff of any county in this State, who shall levy and collect the amount of such fee bill, and twenty per cent. thereon, for the use and benefit of such clerk, in the same manner as on executions; and such sheriff shall be entitled to like fees as on execution: *Provided*, That where the *venue* is changed without application from either party, the costs of such change shall abide the event of the suit.

SEC. 12. When the *venue* shall be changed in any criminal case, the parties, witnesses, and all others who may have entered into recognizances, to attend the trial of such cause, having notice of the change of *venue*, shall be, and are hereby required to attend, at the time and place the trial is to be had, according to such change, and a failure to do so shall work a forfeiture of the recognizance.

SEC. 13. When the *venue* is changed in term time, in a criminal case, the attorney general or circuit attorney shall have all witnesses on the part of the prosecution recognized to appear at the court on the first day thereof when the trial is to be had.

SEC. 14. In all cases where a change of *venue* shall be ordered in a criminal case, if the defendant shall be convicted, and imprisonment shall be a part of the judgment, the sheriff of the county where such conviction shall be had, shall immediately take such prisoner and convey him to the county where the crime shall have been committed, and deliver him to the sheriff thereof, and take his receipt therefor, who shall retain him in custody, according to the judgment of said court; and all costs and charges incurred in removing any prisoner as aforesaid, shall be

allowed and paid out of the county treasury, where the crime shall have been committed, if the defendant be unable to pay the same.

SEC. 15. All questions concerning the regularity of proceedings in obtaining changes of venue, and the right of the court to which the change is made to try the cause and execute the judgment, shall be considered as waived after trial and verdict.

APPROVED: March 3, 1845.

CHAPTER CVI.

WAREHOUSES.

SECTION

1. If perishable property be left in a warehouse, for fifteen months, it may be sold at auction, to

SECTION

pay charges, &c.; notice of sale, to be given by advertisement.

SECTION 1. If any person shall leave, in any public or private warehouse in this State, any property of a perishable nature, or which, if not taken away and sold within fifteen months from the time at which such property was so left, would not, at the expiration of that time, be worth the charges which should then be due upon such property, and if the charges upon such property shall not be paid, then and in that case, it shall be lawful for the occupant or occupants of such warehouse, to sell at auction to the highest bidder, only so much of such property as will pay the charges due, and the expense of selling and advertising the same, upon giving not less than three weeks' public notice of the time and place of such sale, in two or more newspapers published in the town where such warehouse may be situated, or the vicinity thereof.

APPROVED: March 3, 1845.

CHAPTER CVII.

WARRANTS OF CITIES AND TOWNS.

SECTION

1. Warrant or order to be drawn for only one amount on one claim.
2. To be drawn if in favor of person to whom due and no other.

SECTION

3. Warrants payable only to payee, or his legal representatives.
4. Penalty for violation of this chapter, and how recovered.

SECTION 1. In all cases in which any city or town in this State shall be indebted to any person or persons, on any account whatsoever, a warrant or voucher shall be drawn on the treasurer of such city or town, for the whole amount found due to such person, by the tribunal having power to audit and allow claims against such city or town; and such tribunal shall not, in any case, draw more than one warrant or voucher for the amount allowed to one individual at one time.

SEC. 2. No warrant or voucher drawn on the treasurer of any city or town, shall be drawn in favor of any other person than the one to whom the same may be due, and such warrant or voucher may be in the form now prescribed by law.

SEC. 3. No treasurer of any city or town in this State, shall pay any warrant or voucher drawn on him, unless such warrant be presented for payment by the person in whose favor such warrant is drawn, or his assignee, or executor, or administrator.

SEC. 4. Any officer or officers of any town or city, that shall be guilty of violating the provisions of this chapter, shall be deemed guilty of a misdemeanor in office; and for every such violation, shall be fined, in a sum not exceeding five hundred dollars, to be recovered by indictment.

APPROVED : March 3, 1845.

CHAPTER CVIII.

WEIGHTS AND MEASURES.

SECTION

1. One standard of weights and measures; to conform to that established by Congress.
2. Heaped measure, what shall be.
3. Other measure, not heaped.
4. Contracts, &c., to conform to this standard.
5. The hundred weight; the ton.
6. Weight of various grains per bushel.
7. Original standards to be procured by State sealer; where deposited; when opened.
8. Copies to be made for counties.
9. Devices to be impressed on standards.

SECTION

10. County sealers to compare and seal weights and measures brought to them.
11. County sealers to compare with State sealer once in ten years; penalty for neglecting.
12. Fees of county sealer.
13. Penalty for using weights and measures not conforming to the standard herein established.
14. Secretary of State to be State sealer; clerks of county commissioners' courts to be county sealers.

SECTION 1. There shall be but one standard of measure of length and surface, one of weight and one measure of capacity, throughout this State, which shall be in conformity with the standard of measure, length, surface and weight established by Congress.

SEC. 2. All commodities sold by heaped measure, shall be duly heaped up in the form of a cone, the outside of the measure, by which the same shall be measured to the extremity of the base of such cone, and such cone to be as high as the articles to be measured will admit.

SEC. 3. The measures used for measuring dry commodities not heaped, shall be stricken with a straight stick or roller, and of the same diameter from end to end.

SEC. 4. Contracts hereafter to be executed, made within this State, for any work to be done, or for any thing to be sold, delivered, done or agreed for by weight or measure, shall be taken and construed to be made according to the standard weight and measure thus ascertained.

SEC. 5. The hundred weight shall consist of one hundred pounds, and twenty such hundreds shall constitute a ton.

SEC. 6. Whenever wheat, rye, Indian corn, barley, buckwheat or oats shall be sold by the bushel, and no special agreement as to the weight or measurement shall be made by the parties, the bushel shall consist of sixty pounds for wheat, of fifty-four pounds of rye, of fifty-two pounds of Indian corn, of forty-four pounds of barley, of forty pounds of buckwheat, and thirty-two pounds of oats.

SEC. 7. The following original standards, made in conformity to the provisions of this chapter, to-wit: A yard, a pound, a liquid gallon, and a half bushel, shall be procured by the State sealer of weights and measures, and deposited in a chest in his office, which shall only be opened for the sole purpose of comparing such standards with the copies hereinafter described, unless by a joint resolution of the two houses of the legislature, or on the call of either house for information, or by the order of the Governor for scientific purposes.

SEC. 8. Copies of the said original standards, to be made of such materials as the State sealer shall direct, shall be deposited by him in the offices of the county

sealers of the respective counties of this State, at the expense of said counties, who shall severally be responsible for the preservation of the copies respectively delivered to them.

SEC. 9. The State sealer shall cause to be impressed on each of the copies of such original standards, the letter "I," and such other additional device as he shall direct, for the particular county; which device shall be recorded in the State sealer's office, and a copy thereof delivered to the respective county sealers.

SEC. 10. The several county sealers shall compare all weights and measures which shall be brought to them for that purpose, with the above mentioned copies of such standards in their possession; and when the same are found or made to conform to the legal standards, the officer comparing them shall seal and mark such weights and measures.

SEC. 11. It shall be the duty of the county sealers of weights and measures, to compare the copies in their possession once in every ten years, with those existing in the office of the State sealer; and every county sealer who neglects to have the copies in their possession compared as aforesaid, shall pay into the county treasury fifty dollars for county purposes: whenever any county sealer fails for one month to pay the aforesaid penalty, it shall be the duty of the county commissioners' court, to commence suit therefor in their own name, before any justice of the peace of the county, and when collected, the same shall be paid into the county treasury for the uses aforesaid.

SEC. 12. Each county sealer shall be entitled to receive for his services, at and after the following rates: For sealing and marking every beam, six and a quarter cents; for sealing and marking measures of extension, at the rate of six and a quarter cents per yard; not to exceed twenty-five cents for any one measure; for sealing and marking every weight, two cents; for sealing and marking liquid and dry measures, if the same be of the capacity of a gallon or more, six and a quarter cents; of less than a gallon, two cents: they shall also be entitled to a reasonable compensation for making such weights and measures conform to the standard established by this chapter.

SEC. 13. If any person or persons shall hereafter use any weights, measures or beams, in weighing or measuring, which shall not be conformable to the standards of this State, established by this chapter, whereby any purchaser of any commodity or article of trade or traffic shall be injured or defrauded, such purchaser may maintain an action on the case against the offender; and if judgment shall be rendered for the plaintiff, he shall recover five times the damages with costs of suit.

SEC. 14. The secretary of State shall be, *ex officio*, State sealer of weights and measures, and the clerks of the county commissioners' court shall be county sealers of weights and measures for their several counties.

APPROVED: March 3, 1845.

CHAPTER CIX.

WILLS.

SECTION

1. Who capable of making will, devising estate, real and personal.
2. Wills, testaments and codicils to be in writing; how signed; how witnessed; how proved before probate court; fraud, compulsion, &c., when to invalidate will; when satisfactorily proved, will to be recorded; its effect.
3. Duty of witnesses to appear before court of probate and prove will; punishment for refusal.
4. How testimony of non-resident witnesses taken.
5. If probate justice be a witness, will may be proved before circuit court; clerk of court to certify will to probate court; effect of will thus proved.
6. When will is presented, to be proved and letters testamentary granted without delay; will may be contested within five years; proceedings in such cases.
7. When subscribing witness be dead, how will may be proved.
8. Wills proved and properly authenticated out of this State, to be recorded and of force in this State.
9. Nuncupative will, how proved; to be committed to writing; its effect; fraud and compulsion may invalidate will; to be recorded; letters testamentary not to be granted until after sixty days.
10. In case of nuncupative will, heirs, &c., to be notified to appear and make objection; if none be made, letters to be granted.
11. If devisee be subscribing witness, will to be void as to him, unless otherwise proved; rights of such witness, how preserved.
12. Debtor not discharged from liability by being chosen executor.
13. Children born subsequent to execution of will, how provided for.
14. Estate, how disposed of, if devisee die, and the will contain no provision for such contingency.
15. How will may be revoked or cancelled.
16. Wills to be recorded; authenticated copies to be evidence.
17. In what county will shall be proved.
18. Person having will, to deliver same to court of probate on death of testator; how compelled to do so, or punished for refusing; destroying or secreting will, punished as larceny.
19. Executors, when entitled to letters testamentary; on their failure to act, letters of administration to be granted.
20. Duty of executors; on appointment to have will recorded; may refuse to act; penalty for neglect to act, without just excuse; penalty, how recovered.
21. If executor refuse to administer, who shall be appointed administrator.
22. Executor of executor not to be executor of first testator.

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23. Person aged seventeen years may be executor, but must have guardian until of age.
24. Power of executor over estate, before probate of the will; his liability in such case.
25. One of two executors dying, the other to act.
26. Oath to be taken by executor or administrator; form of, by whom administered.
27. Bond to be given by executors; form of; execution of.
28. When bond may be dispensed with; when required.
29. If person appointed executor be under proper age, or be otherwise incompetent to act, administrator to be appointed; when husband may act for wife; fact of incompetency, how tried.
30. When, by division of county, administrator is thrown into new county, how to proceed.
31. Letters of administration, obtained by fraud, may be revoked.
32. Probate court to try issue if fraud in such case.
33. On such revocation, letters to be granted anew.
34. On resignation of administrator, another to be appointed; resignation not to affect release.
35. In case of contest or delay, in procuring probate of will, court may appoint administrator for the time during which such contest or delay exists.
36. Form of letters granted to such person.
37. Form of bond to be given.
38. Form of oath to be taken.
39. Duty of person so appointed; his compensation.
40. Power to collect debts, &c.; suits brought, &c.
41. On appointment of administrator, person appointed *pro tem.*, to deliver assets to such administrator; penalty for refusal; how sued for and recovered.
42. Estate not bequeathed, how distributed.
43. Creditor may, in certain cases attest will.
44. If, by renunciation of benefits of will by the widow, legacies be diminished, how loss apportioned.
45. If widow commit waste, how liable; second husband liable therefor.
46. What deemed intestate estate; how such estate disposed of; rights of heirs; rights of widow; of collaterals, &c.
47. Estate of wife, when one-half to go to husband.
48. Separate property to be retained by widow, free from debts; how set apart to her.
49. Widow may relinquish specific articles and take others, or money in lieu of them.
50. Right of widow to separate property not affected by her renouncing, or failing to renounce benefits of will.
51. Persons, having received advancement out of estate, may return the same and receive same benefits of will, as other distributees.
52. Intermarriage of parents to legitimate children; and entitle them to share in estate.
53. Illegitimate children to inherit estate of mother.

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54. Posthumous children to share in estate of parent.
55. Husband to administer upon estate of wife; wife upon estate of husband; when next of kin, creditors, indifferent person or public administrator; proof of death of intestate to be made.
56. Public administrators, how appointed.
57. When administration to be granted to the public administrator.
58. Further powers and duties of public administrator.
59. Oath of public administrator.
60. Bond required of public administrator; on neglect, his office vacated.
61. If, after letters are granted to public administrator, other persons be found entitled thereto, first letters to be revoked and new granted; when application therefor to be made; compensation of public administrator.
62. Balance remaining in the hands of public administrator after payment of debts, how disposed of.
63. Public administrator may, in first instance, protect property of intestate, until letters to proper person can be perfected.
64. When person, other than kin or creditors apply for letters, how to proceed.
65. Form of letters to executors.
66. Form of letters to administrators.
67. Oath of administrators, form of.
68. Bond, form of; how to be executed.
69. Bonds, how prosecuted; effect of recovery; costs in suits thereon; certified copies of bonds to be evidence.
70. Administrator of executor or administrator, his rights and duties.
71. Letters of administration to be revoked, if will be produced.
72. If such will be afterwards set aside, letters *de bonis non* granted.
73. If persons having received letters become incompetent, letters to be revoked, and others granted; such revocation to be recorded.
74. Executor or administrator residing or removing out of State, or neglecting to render accounts, &c., to be removed, and others appointed.
75. If the office of one of several executors or administrators become vacant, may be filled, &c.; if office of all is vacated, how filled; liability of one whose letters are revoked; actions may be maintained by successor.
76. Construction of words and phrases.
77. False pleading not to make administrator or executor liable beyond value of assets.
78. Court of probate may demand additional security; on refusal, may revoke letters; effect thereof.
79. Securities apprehensive of loss, by acts of principal, how relieved.
80. Condition of new bond.
81. Inventory to be made and filed in probate court; what facts it shall contain.
82. Warrant of appraisement to be granted; form thereof; fee of probate justice therefor; vacancy, how filled.
83. Oath of appraisers; their duties.
84. Appraisement bill to be certified, and filed in office of probate justice.
85. Inventories, bills of appraisement, and copies thereof to be *prima facie* evidence.
86. New assets found, to be inventoried, appraised, and return thereof made.
87. Appraisers' fees.
88. If estate be found solvent, widow may elect her share of estate; duty of executor or administrator to set apart to her, her share; pen-

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- alty for neglect or refusal to do so; how sued for and recovered.
89. Inventories, &c., to be successively made; what facts to be reported to probate court from time to time.
90. Persons having effects belonging to estate, and concealing the same, how compelled to account for and surrender the same.
91. Books of deceased person subject to inspection.
92. Executors and administrators chargeable with estate received.
93. Sales of real estate, when directed in will, how made, and when valid.
94. Property of deceased not to be removed out of this State; if done, letters to be revoked, and suit brought on bond; verdict of jury; measure of damages.
95. Time to be fixed for adjusting accounts; notice to be given to creditors; how given; creditors not presenting claims, their rights; costs, when estates answerable for; execution to be stayed one year.
96. Sale of assets; notice thereof; terms of sale; when estate not to be sold, but distributed in kind.
97. Crops may be disposed of; when to be sold, &c.; avails thereof to be assets.
98. Clerk and crier at sale; their compensation; hours of sale; when sale void.
99. Sale bill to be returned to probate court, after sale of effects; to be certified by clerk and crier.
100. Claims not due, may be presented and allowed, after deducting rebate of interest.
101. Suit not to be brought against executor until the expiration of one year; execution; costs, when not to be recovered.
102. Suit not to be brought after one year subsequent to final settlement of accounts.
103. When personal estate is found insufficient to pay debts; executor or administrator may petition circuit court, for leave to sell real estate; notice of such petition to be given; what statements to be filed with petition.
104. Court to hear petition and examine proof, &c., of parties interested; may, if proper, order sale of real estate; property divided and sold, in what manner; overplus, how disposed of.
105. Who shall make sale and execute conveyance; what conveyance shall set forth; its effect.
106. Sale to be at public vendue; hour of sale; place of sale; notice of sale, how given; penalty for selling contrary to law; sale to be valid notwithstanding informality; credit may be given; security to be taken.
107. Guardian *ad litem* to be appointed for infant heirs or devisees.
108. Real estate not to be sold until personal estate is applied in payment of debts.
109. Appeals allowed; when to be taken.
110. Assets, arising from the sale of real estate to be applied in payment of debts.
111. Certificates of United States' lands, bought, but not paid for, may be sold; avails, how applied.
112. When such lands may be patented.
113. General provisions as to United States' lands patented, but not paid for.
114. When estate is insolvent, entry thereof to be made; suits afterwards brought against estate, to be at cost of creditor suing; when real estate is required to be sold, suit not to be brought, until avails are received; probate court may coerce application to circuit court for sale of real estate.
115. Classification of demands against estate; to be paid in their order; debts not exhibited in two years, barred, except other assets be found

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- rights of incompetent persons, saved until they become competent.
116. Manner of exhibiting claims.
 117. If party suing estate, be found indebted, judgment to be given against him, and execution awarded.
 118. Claimants to give ten days' notice of presentation of claims; judgments, and notes of hand, how proved.
 119. In what cases oath of claimants allowed; court may require oath, &c.
 120. Debts, when allowed, in what order paid.
 121. Claims of executors and administrators, how adjusted and allowed.
 122. Court to list and class demands; claim paid before it is allowed, to be proved.
 123. Administrators and executors, how often to exhibit accounts for settlement.
 124. On each settlement, court to ascertain amount of debts and assets; assets to be paid out *pro rata*; subsequent payments.
 125. When personal estate is insufficient, abstract of debts and assets to be made out and presented to the circuit court for order to sell real estate; avails to be applied in payment of debts.
 126. Executor or administrator, how punished for not paying over money; suit on bond; what considered a breach.
 127. Legacies, when may be paid.
 128. Heir, to be charged with money received by him.
 129. Distributees to give bond to refund, if debts subsequently appear against estate.

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130. If it be necessary for distributees to refund, apportionment to be made among them by court of probate; and in case of refusal to refund, for sixty days, suit may be brought on bond; or, if there be no bond, in an action of debt.
131. In what case executors may have suit against each other; when executor be residuary legatee, his remedy; other legatees; order of payment, to be made before suit.
132. Actions of trover, detinue and replevin may survive for and against executors and administrators.
133. Executor or administrator of deceased mortgagee, on receiving payment, may discharge mortgage.
134. Executors or guardians, may mortgage estate; for what time.
135. Lands not to be mortgaged, until permission of probate court is had; avails, how applied; bond to be given.
136. Compensation of executors and administrators.
137. Suit on bond, may be brought against them for breach thereof.
138. Appeals allowed to circuit and supreme courts.
139. Power of probate court to enforce its orders, &c.; may attach, fine and imprison.
140. Duty of sheriff to attend court when required, execute writs, keep order; fees, how allowed and taxed.
141. Executors and administrators, heretofore appointed, to be bound by provisions of this chapter.

SECTION 1. Every person aged twenty-one years, if a male, or eighteen years, if a female, or upwards, and not married, being of sound mind and memory, shall have power to devise all the estate, right, title and interest, in possession, reversion or remainder, which he or she hath, or at the time of his or her death shall have, of, in and to any lands, tenements, hereditaments, annuities or rents, charged upon or issuing out of them; or goods and chattels, and personal estate of every description whatsoever, by will or testament: All persons of the age of seventeen years, and of sound mind and memory, married women excepted, shall have power to dispose of their personal estate, by will or testament: and married women shall have power to dispose of their separate estate, both real and personal, by will or testament, in the same manner as other persons.

SEC. 2. All wills, testaments and codicils, by which any lands, tenements, hereditaments, annuities, rents or goods and chattels are devised, shall be reduced to writing, and signed by the testator or testatrix; or by some person in his or her presence, and by his or her direction; and attested in the presence of the testator or testatrix, by two or more credible witnesses; two of whom declaring on oath or affirmation, before the court of probate for the proper county, that they were present and saw the testator or testatrix sign said will, testament or codicil, in their presence; or acknowledged the same to be his or her act and deed; and that they believed the testator or testatrix to be of sound mind and memory, at the time of signing or acknowledging the same, shall be sufficient proof of the execution of said will, testament or codicil, to admit the same to record: *Provided*, That no proof of fraud, compulsion or other improper conduct be exhibited, which in the opinion of the court of probate, shall be deemed sufficient to invalidate or destroy the same; and every will, testament or codicil, when thus proven to the satisfaction of the court of probate, shall be recorded by the justice thereof, in a book to be provided by him for that purpose, and shall be good and available in law for the granting,

conveying and assuring the lands, tenements and hereditaments, annuities, rents, goods and chattels therein and thereby given, granted and bequeathed.

SEC. 3. It shall be the duty of each and every witness to any will, testament or codicil, made and executed in this State as aforesaid, to be and appear before the court of probate on the regular day for the probate of such will, testament or codicil, to testify of and concerning the execution and validity of the same; and the said court of probate shall have power and authority to attach and punish, by fine and imprisonment, or either, any witness who shall, without a reasonable excuse, fail to appear when duly summoned for the purpose aforesaid: *Provided*, The said punishment by imprisonment shall in no case exceed the space of twenty days; nor shall a greater fine be assessed for any such default, than the sum of fifty dollars.

SEC. 4. When any will, testament or codicil shall be produced to the court of probate, for probate of the same, and any witness attesting such will, testament or codicil, shall reside without the limits of this State, it shall be lawful for the probate justice to issue a *dedimus potestatem*, or commission, annexed to such will, testament or codicil, directed to some judge, justice of the peace, mayor or other chief magistrate of the city, town, corporation or county where such witness may be found, authorizing the taking and certifying of his or her attestation in due form of law. And if the person to whom any such commission shall be directed, shall certify, in the manner that such acts are usually authenticated, that the witness personally appeared before him, and made oath or affirmation that the testator or testatrix signed and published the writing annexed to such commission, as his or her last will and testament; or that some other person signed it by his or her direction; that he or she was of sound mind and memory; and that he or she subscribed his or her name as a witness thereto, in the presence of the testator or testatrix, and at his or her request; such oath or affirmation shall have the same operation, and the will shall be admitted to probate in like manner, as if such oath or affirmation had been made in the court of probate from whence such commission issued.

SEC. 5. In all cases, wherein a probate justice of the peace, or such other person as may be authorized by law to grant probate of wills and testaments, may and shall have become a witness to any will or testament which is required by law to be proved before him as such probate justice of the peace, or person authorized to grant probate as aforesaid, and the testimony of such witness is necessary to the proof of the same, then, and in such case, it shall be his duty to go before the circuit court of the county in which such will is to be admitted to record, and make proof of the execution of the same, in the same manner that probate of wills is required to be made in other cases. And it shall be the duty of the clerk of the circuit court aforesaid, forthwith to certify such will, proven as aforesaid, to the probate court of the county; and said will shall, thereupon, have the same force and effect that it would have had if it had been proven by one credible witness before the court of probate; and if there are other witnesses to said will, the court of probate shall take their evidence in support of said will, as in other cases.

SEC. 6. When any will, testament or codicil shall be exhibited in the court of probate, for probate thereof as aforesaid, it shall be the duty of the court to receive probate of the same without delay, and to grant letters testamentary thereon to the person or persons entitled; and to do all other needful acts, to enable the parties concerned to make settlement of the estate at as early a day as shall be consistent with the rights of the respective persons interested therein: *Provided, however*,

That if any person interested shall, within five years after the probate of any such will, testament or codicil in the court of probate as aforesaid, appear, and, by his or her bill in chancery, contest the validity of the same, an issue at law shall be made up, whether the writing produced, be the will of the testator or testatrix or not; which shall be tried by a jury in the circuit court of the county wherein such will, testament or codicil shall have been proven and recorded as aforesaid, according to the practice in courts of chancery in similar cases; but if no such person shall appear within the time aforesaid, the probate as aforesaid, shall be forever binding and conclusive on all the parties concerned, saving to infants, *femes covert*, persons absent from the State or *non compos mentis*, the like period after the removal of their respective disabilities. And in all such trials by jury as aforesaid, the certificate of the oath of the witnesses at the time of the first probate, shall be admitted as evidence, and to have such weight as the jury shall think it may deserve.

SEC. 7. In all cases where any one or more of the witnesses to any will, testament or codicil as aforesaid, shall die or remove to some distant country, unknown to the parties concerned, so that his or her testimony can not be procured, it shall be lawful for the probate justice, or other court having jurisdiction of the subject matter, to admit proof of the hand writing of any such deceased or absent witness as aforesaid, and such other secondary evidence as is admissible in courts of justice to establish written contracts generally, in similar cases; and may thereupon proceed to record the same, as though such will, testament or codicil had been proved by such subscribing witness or witnesses, in his, her or their proper persons.

SEC. 8. All wills, testaments and codicils, or authenticated copies thereof, proven according to the laws of any of the United States, or the territories thereof, or of any country out of the limits of the United States, and touching or concerning estates within this State, accompanied with a certificate of the proper officer or officers, that said will, testament, codicil or copy thereof, was duly executed and proved, agreeably to the laws and usages of that State or country in which the same was executed, shall be recorded as aforesaid, and shall be good and available in law, in like manner as wills made and executed in this State.

SEC. 9. A nuncupative will shall be good and available in law for the conveyance of personal property thereby bequeathed, if committed to writing within twenty days, and proven before the court of probate, by two or more credible, disinterested witnesses, who were present at the speaking and publishing thereof, who shall declare on oath or affirmation, that they were present and heard the testator pronounce the said words, and that they believed him to be of sound mind and memory; and that he or she did at the same time, desire the persons present, or some of them, to bear witness that such was his or her will, or words to that effect; and that such will was made in the time of the last sickness of the testator or testatrix; and it being also proven by two disinterested witnesses, other than those hereinbefore mentioned, that the said will was committed to writing within ten days after the death of the testator or testatrix; and no proof of fraud, compulsion or other improper conduct be exhibited, which, in the opinion of said court, shall be sufficient to invalidate or destroy the same; and all such wills, when proven and authenticated as aforesaid, shall be recorded by the probate justice in like manner as other wills are directed to be recorded by this chapter: *Provided*, That no letters testamentary shall be granted on such will, until the expiration of sixty days after the death of the testator or testatrix.

SEC. 10. In all cases where a nuncupative will shall be proved and recorded as aforesaid, the court of probate shall issue a citation to the heirs and legal representatives of the testator or testatrix, if they reside in the county; if not, then said court shall cause an advertisement to be inserted in some one of the newspapers printed in this State, notifying the said heirs and legal representatives of the testator or testatrix, at what time and place letters testamentary will be granted upon such will, requiring them and each of them to appear and show cause, if any they have, why such letters testamentary should not be granted; and if no sufficient cause be shown, letters shall be granted thereon as in other cases.

SEC. 11. If any beneficial devise, legacy or interest shall be made or given, in any will, testament or codicil, to any person subscribing such will, testament or codicil, as a witness to the execution thereof, such devise, legacy or interest shall, as to such subscribing witness, and all persons claiming under him, be null and void, unless such will, testament or codicil be otherwise duly attested by a sufficient number of witnesses exclusive of such person, according to this chapter; and he or she shall be compellable to appear and give testimony on the residue of such will, testament or codicil, in like manner as if no such devise or bequest had been made. But if such witness would have been entitled to any share of the testator's estate, in case the will, testament or codicil was not established, then so much of such share shall be saved to such witness, as shall not exceed the value of the said devise or bequest made to him or her as aforesaid.

SEC. 12. In no case hereafter, within this State, where any testator or testatrix shall, by his or her will, appoint his or her debtor to be his or her executor or executrix, shall such appointment operate as a release or extinguishment of any debt due from such executor or executrix, to such testator or testatrix; unless the testator or testatrix shall, in such will, expressly declare his or her intention to devise, bequeath or release such debt; nor even in that case, unless the estate of such testator or testatrix is sufficient to discharge the whole of his or her just debts, over and above the debt due from such executor or executrix.

SEC. 13. If, after making a last will and testament, a child or children shall be born to any testator or testatrix, and no provision be made in such will for such child or children, the will shall not, on that account, be revoked; but unless it shall appear by such will, that it was the intention of the testator or testatrix, to disinherit such child or children, the devises and legacies by such will granted and given, shall be abated in equal proportions, to raise a portion for such child or children, equal to that which such child or children would have been entitled to receive out of the estate of such testator or testatrix, if he or she had died intestate.

SEC. 14. Whenever a devisee or legatee, in any last will and testament, being a child or grandchild of the testator or testatrix, shall die before such testator or testatrix, and no provision shall be made for such contingency, the issue, if any there be, of such devisee or legatee, shall take the estate devised or bequeathed, as the devisee or legatee would have done, had he or she survived the testator or testatrix; and if there be no such issue at the time of the death of such testator or testatrix, the estate disposed of by such devise or legacy, shall be considered and treated in all respects as intestate estate.

SEC. 15. No will, testament or codicil shall be revoked, otherwise than by burning, cancelling, tearing or obliterating the same, by the testator himself, or in his presence, by his direction and consent, or by some other will, testament or codicil in writing, declaring the same, signed by the testator or testatrix, in the pre-

sence of two or more witnesses, and by them attested in his or her presence ; and no words spoken shall revoke or annul any will, testament or codicil in writing, executed as aforesaid, in due form of law.

SEC. 16. All original wills, after probate thereof, shall be recorded, and remain in the office of the probate justice of the proper county ; and authenticated copies thereof, certified under the hand and seal of said probate justice, shall be admitted as evidence in any court of law or equity in this State.

SEC. 17. If any testator or testatrix shall have a mansion house or known place of residence, his or her will shall be proved in the court of probate of the county wherein such mansion house or place of residence shall be. If he or she has no place of residence, and lands be devised in his or her will, it shall be proved in the court of probate of the county wherein the lands lie, or in one of them, where there shall be land in several different counties ; and if he or she have no such known place of residence, and there be no lands devised in such will, the same may be proved either in the county where the testator or testatrix shall have died, or that wherein his or her estate, or the greater part thereof, shall lie.

SEC. 18. Any person or persons who may have in his or her possession, any last will or testament of another for safe keeping or otherwise, shall, immediately upon the death of the testator or testatrix, deliver up the said will to the court of probate of the proper county ; and upon a failure or refusal so to do, the court of probate may issue attachment, and compel the production of the same ; and the person or persons thus withholding any such will, testament or codicil, as aforesaid, shall forfeit and pay twenty dollars per month, from the time the same shall be thus wrongfully withheld, to be recovered by action of debt for the use of the estate, by any person who will sue for the same, in any court having jurisdiction thereof : and if any person to whom a will, testament or codicil hath been, or shall be delivered by the party making it, for safe custody as aforesaid, shall alter or destroy the same without the direction of the said party, or shall wilfully secrete it for the space of six months after the death of the testator or testatrix shall be known to him or her, the person so offending shall, on conviction thereof, be sentenced to such punishment as is, or shall be inflicted by law, in cases of larceny.

SEC. 19. All persons named as executors in any will, testament or codicil as aforesaid, shall, after the same shall be proved and admitted to record, as before directed, be entitled to letters testamentary thereon ; and where there shall be no executors named in such will, testament or codicil, or the executor named therein shall die, refuse to act or be otherwise disqualified, letters of administration, with the will annexed, shall be granted to such person or persons as may be entitled thereto. In all which cases copies of such wills, testaments or codicils shall go out with the letters.

SEC. 20. It shall be the duty of the executor or executors of the last will and testament of any person deceased, knowing of his, her or their being so named or appointed, within thirty days next after the decease of the testator or testatrix, to cause such will to be proved and recorded in the proper county as aforesaid ; or to present said will and declare his or her refusal to accept of the executorship : and every such executor or executrix, so neglecting his trust and duty as aforesaid, without just excuse for such delay, to the satisfaction of the judge of probate, shall forfeit the sum of twenty dollars per month, from and after the expiration of the said term of thirty days, until he shall cause probate of said will to be made, or present the same as aforesaid ; to be recovered by action of debt, for the use of the es-

tate, by any person who will sue for the same in any court having jurisdiction thereof.

SEC. 21. Upon the refusal of the executor or executors to administer the estate, or upon qualification as aforesaid, the court of probate shall commit the administration of the estate, of the deceased, with a copy of the will annexed, unto the widow or next of kin to the deceased; and upon their refusal, neglect or incapacity to act, may grant such administration to one or more of the principal creditors; and on their refusal, to such other person or persons as the court shall think fit.

SEC. 22. The executor of an executor shall not, in consequence thereof, be executor of the first testator.

SEC. 23. Persons of the age of seventeen years, of sound mind and memory, may be appointed executors; but should any person under the age of twenty-one years, be appointed executor or executrix, the court of probate shall appoint some competent person to manage and control the estate, under the direction of the court, until such executor or executrix appointed by the will, shall attain the full age of twenty-one years; and all such persons appointed to take charge of the estate during the minority of any such executor or executrix shall, for the time being, give bond with security as in other cases.

SEC. 24. The power of the executor or executors over the testator's estate, before probate of the will and obtaining letters testamentary, shall extend to the burial of the deceased, the payment of necessary funeral charges, and the taking care of the estate; but in all such cases, if the will shall be rejected when presented for probate, and such executor thereby never qualify, he shall in nowise be liable as an executor, of his own wrong, unless upon refusal to deliver up the estate to the person or persons authorized to receive the same: *Provided*, That this section shall not be construed to exempt any such person claiming to be executor as aforesaid, for any waste or misapplication of such estate.

SEC. 25. Where two or more executors are appointed in and by the same will, and one or more of the persons named as such, shall die, refuse to take upon himself or herself such executorship, or be otherwise disqualified, letters testamentary shall be granted thereon to the other person or persons so named, not renouncing as aforesaid, and not disqualified.

SEC. 26. Every executor or administrator with the will annexed, at the time of proving the will and granting letters testamentary, or of administration as aforesaid, shall take and subscribe before the court of probate, the following oath, to-wit: "I do solemnly swear, (or affirm,) that this writing contains the true last will and testament of the within named A. B., deceased, so far as I know or believe; and that I will well and truly execute the same, by paying first the debts and then the legacies mentioned therein, as far as his goods and chattels will thereunto extend, and the law charge me; and that I will make a true and perfect inventory of all such goods and chattels, rights and credits, as may come to my hands or knowledge, belonging to the estate of the said deceased, and render a fair and just account of my executorship, when thereunto required by law, to the best of my knowledge and abilities: so help me God." Which said oath shall be administered by the probate justice, and be attached to and form a part of the probate of said will.

SEC. 27. All executors hereafter to be appointed, unless the testator or testatrix shall otherwise direct in the will, and all administrators with the will annexed, shall, before entering upon the duties of their executorships and administrations, respectively, enter into bond with good and sufficient security, to be approved by the

court of probate, in a sum double the value of the estate, and payable to the people of the State of Illinois, for the use of the parties interested, in the following form, to-wit: "Know all men by these presents, that we, A. B., C. D., and E. F., of the county of _____ and State of Illinois, are held and firmly bound unto the people of the State of Illinois, in the penal sum of _____ dollars, current money of the United States, which payment well and truly to be made and performed, we, and each of us bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents: Witness our hands and seals, this _____ day of _____ A. D., 18____.

The condition of the above obligation is such, that if the above bounden A. B., executor of the last will and testament of G. H., deceased, (or administrator with the will annexed, of G. H., deceased, as the case may be,) do make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits, lands, tenements and hereditaments, and the rents and profits issuing out of the same, of the said deceased, which have, or shall come to the hands, possession or knowledge of the said A. B., or into the possession of any other person for him, and the same so made do exhibit in the court of probate for the said county of _____ as required by law; and also make and render a fair and just account of his actings and doings as such executor, (or administrator,) to said court, when thereunto lawfully required; and to well and truly fulfil the duties enjoined on him in and by the said will; and shall, moreover, pay and deliver to the persons entitled thereto, all the legacies and bequests contained in said will, so far as the estate of the said testator will thereunto extend, according to the value thereof, and as the law shall charge him; and shall, in general, do all other acts which may, from time to time, be required of him by law, then this obligation to be void, otherwise to remain in full force and virtue." Which said bond shall be signed and sealed by the said executor, (or administrator,) and his securities, and attested by the probate justice, and filed in his office.

SEC. 28. Where any testator or testatrix shall leave visible estate, more than sufficient to pay all his or her debts, and by will shall direct that his or her executors shall not be obliged to give security, in that case, no security shall be required, unless the court of probate shall see cause, from its own knowledge, or the suggestions of creditors or legatees, to suspect the executors of fraud, or that the personal estate will not be sufficient to discharge all the debts, such court may require security, and the same shall be given before letters testamentary shall be granted, notwithstanding any directions to the contrary in said will.

SEC. 29. If any person named as an executor or executrix in any last will and testament, shall be, at the time when administration ought to be granted, under the age of seventeen years, or of unsound mind, or convicted of any crime rendering him or her infamous, or shall be a married woman, letters of administration, or testamentary, (as the case may require,) may be granted, in the same manner as if such person had not been named as such in such will, unless in the case of a married woman, her husband shall give bond with her as aforesaid, with two or more sufficient securities, to be filed as aforesaid, for her faithful performance as such executrix; and on all questions touching such disqualification, the court of probate shall receive the like testimony as would be admissible in any court of law or equity, in similar cases.

SEC. 30. In all cases in which, by the division of any county in this State, the administrator or administratrix, to whom letters of administration may have been granted by the probate court of such county, shall, by such division, be placed be-

yond the limits of the county in which such letters may have been granted, then and in all such cases, the probate court of such county shall be authorized to proceed and settle the estate upon which letters of administration may have been so granted, in the same manner as if no such division had occurred.

SEC. 31. Courts of probate shall have power, and they are hereby required, to revoke letters of administration, in all cases where the same have been, or hereafter may be granted to any person, upon the false and fraudulent pretence of being a creditor of the estate upon which administration has been or may be granted, or upon any other false pretence whatever.

SEC. 32. In all controversies arising under this chapter, the court of probate shall proceed to hear and determine the same: and if it shall appear that such letters were fraudulently obtained by such administrator, the court shall revoke the same, and give judgment against the administrator for all costs of suit, and issue execution therefor, as in other cases.

SEC. 33. In all cases where any court of probate shall hereafter revoke any letters of administration, it shall proceed to grant the same to such person or persons as may be entitled thereto.

SEC. 34. When any administrator shall resign his office in writing, and such resignation shall be accepted, the probate justice shall have power to appoint another administrator; but the acceptance of such resignation shall not be construed to exonerate any such administrator or his securities, from liabilities incurred previous to such acceptance.

SEC. 35. During any contest, in relation to the probate of any will, testament or codicil, before the same shall be recorded, or until a will, which may have once existed, but shall be destroyed or concealed, shall be established, and the substance thereof committed to record, with the proof thereupon taken, or during any contest in regard to the right of executorship, or to administer the estate of any person dying, either testate or intestate, or whenever any other contingency may happen, which shall be productive of great delay, before letters testamentary or of administration can be issued upon the estate of such testator or intestate, to the person or persons having legal preference to the same, the court of probate may appoint any person or persons as administrators, to collect and preserve the estate of any such decedent, until probate of his will, or until administration of his estate be granted, taking bond and security for collecting the estate, making an inventory thereof, and safe keeping and delivering up the same when thereunto required by the said court of probate, to the proper executors or administrators, whenever they shall be admitted and qualified as such.

SEC. 36. The form of the letters to be granted to the person or persons so appointed to collect and preserve the estate of the decedent as aforesaid, shall be as follows, viz: "The people of the State of Illinois: To all to whom these presents shall come, greeting:—Know ye, that whereas, A. B., late of the county of _____ and State of Illinois, deceased, as it is said, had, at his (or her) decease, personal property within this State, the administration whereof can not be immediately granted to the persons by law entitled thereto, but which, if speedy care be not taken, may be lost, destroyed or diminished; to the end, therefore, that the same may be preserved for those who shall appear to have a legal right or interest therein, we do hereby request and authorize C. D., (and E. F., if two shall be appointed,) of the county of _____ and State aforesaid, to collect and secure the said property, wheresoever the same may be, in this State, whether it be goods, chattels, debts or

credits, and to make, or cause to be made, a true and perfect inventory thereof, and to exhibit the same, with all convenient speed, to the court of probate of the said county of _____ together with a reasonable account of his collection, acts and doings in the premises aforesaid. Witness, G. H., probate justice, in and for the said county of _____ at his office in _____ this day of _____ A. D., 18 _____
 G. H., *Probate Justice.* [L. s.]”

SEC. 37. Before letters of administration to collect shall be granted as aforesaid, the person or persons so appointed as aforesaid, shall give bond, with good and sufficient security, to be approved by the court of probate, in the following form, to-wit :

“Know all men by these presents, that we, C. D., E. F. and J. K., of the county of _____ and State of Illinois, are held and firmly bound unto the people of the State of Illinois, in the penal sum of _____ dollars, current money of the United States, for the payment of which, well and truly to be made and performed, we bind ourselves, our heirs, executors, administrators and assigns, jointly, severally and firmly by these presents : Witness our hands and seals, this day of _____ 18 _____. The condition of the above obligation is such, that if the above bounden C. D. shall well and honestly discharge the duties appertaining to his appointment as administrator to collect of the estate of A. B., late of the county of _____ deceased ; and shall make or cause to be made, a true and perfect inventory of all such goods, chattels, debts and credits of the said deceased, as shall come to his or her possession or knowledge ; and the same in due time return to the office of the probate justice of the proper county ; and shall also deliver to the person or persons authorized by the said court of probate, as executors or administrators to receive the same, all such goods, chattels and personal estate, as shall come to his or her possession as aforesaid, and shall in the general, perform such other duties as shall be required of him (or her) by law, then the above obligation to be void : Otherwise to remain in full force and virtue.” Which said bond shall be signed and sealed by such administrator, and his (or her) securities, attested by the probate justice and filed in his office.

SEC. 38. Before any administrator to collect, shall enter upon the duties of his appointment as aforesaid, he or she shall take and subscribe the following oath or affirmation, before the court of probate, to-wit : “I do solemnly swear, (or affirm,) that I will well and honestly discharge the trust reposed in me as collector, or administrator to collect, of the estate of A. B., deceased, according to the tenor and effect of the letters granted to me by the court of probate of the said county of _____ to the best of my knowledge and ability : So help me God.” Which said oath shall be reduced to writing, subscribed by the party making it, and filed in the office of the probate justice before whom the same shall be taken.

SEC. 39. Every collector so appointed as aforesaid, shall have power to collect the goods, chattels and debts of the said deceased, according to the tenor of the said letters, and to secure the same at such reasonable and necessary expense as shall be allowed by the court of probate ; and the said court may authorize him or her, immediately after the inventory and appraisement of such estate, to sell such as shall be perishable or may be injured by delay, and to account for the same ; and for the whole trouble incurred by such collector, the court of probate may allow such commission on the amount of the said personal estate as shall be actually collected and delivered to the proper executor or administrator as aforesaid, as said court may

deem just and reasonable, provided the same shall not exceed six per cent. on the amount stated in such inventory or bill of appraisement as aforesaid.

SEC. 40. Every collector appointed as aforesaid, shall have power to commence suits for debts due to the decedent, and to release the same on payment thereof; and no such suit shall abate by the revocation of the letters of such administrator to collect, or collector; but the same may be prosecuted to a final decision by the executor or executors, administrator or administrators, to whom letters testamentary or of administration, may be granted as aforesaid.

SEC. 41. On the granting of letters testamentary or of administration as aforesaid, the power of any such collector as may have been so appointed, shall cease, and it shall be his duty to deliver, on demand, all the property and money of the deceased, which shall have come to his hands or possession, (saving such commission as may be allowed by the court of probate as aforesaid,) to the person or persons obtaining such letters; and in case any such collector or administrator shall refuse or neglect to deliver over such property and money to his successor, when legal application shall be made therefor, such person or persons, so neglecting or refusing, shall be liable to pay twenty per cent. over and above the amount of all such property or money as shall come to his hands by virtue of his said administration; and shall, moreover, forfeit all claim to any commission for collecting and preserving the estate; which said twenty per cent. together with all damages which may be sustained by reason of the breach of any bond, which may at any time be given by any such collector, may be sued for and recovered by the person or persons to whom letters testamentary or of administration may be granted as aforesaid, for the use of the estate of such decedent.

SEC. 42. All such estate, both real and personal, as is not devised or bequeathed in the last will and testament of any person, shall be distributed in the same manner as the estate of an intestate; but in all such cases, the executor or executors, administrator or administrators, with the will annexed, shall have the preference in administering on the same.

SEC. 43. If any lands, tenements or hereditaments, shall be charged with any debt or debts, by any will, testament or codicil, and the creditor whose debt is so secured, shall attest the execution of the same, such creditor shall, notwithstanding, be admitted as a witness to the execution thereof.

SEC. 44. In all cases where a widow shall renounce all benefit under the will, and the legacies and bequests therein contained to other persons shall, in consequence thereof, become diminished or increased in amount, quantity or value, it shall be the duty of the court of probate, upon the settlement of such estate, to abate from, or add to such legacies and bequests in such manner as to equalize the loss sustained, or advantage derived thereby, in a corresponding ratio to the several amounts of such legacies and bequests according to the intrinsic value of each.

SEC. 45. If the widow commit waste in the lands and tenements, or the personal estate of the deceased, she shall be liable to an action by the heir or devisee, or his or her guardian, if of real estate; or by the executor or administrator, if of personal estate; and if she marry a second husband, he shall be answerable with her in damages, for any waste committed by her as aforesaid, before such second marriage, or by the husband himself after such marriage.

SEC. 46. Estates both real and personal, of resident or non-resident proprietors in this State, dying intestate, or whose estates, or any part thereof, shall be deemed

and taken as intestate estate, and after all just debts and claims against such estates shall be paid as aforesaid, shall descend to and be distributed to his or her children and their descendants, in equal parts; the descendants of a deceased child or grandchild taking the share of their deceased parent in equal parts among them: and when there shall be no children of the intestate, nor descendants of such children, and no widow, then to the parents, brothers and sisters of the deceased person and their descendants, in equal parts among them; allowing to each of the parents, if living, a child's part, or to the survivor of them, if one be dead, a double portion; and if there be no parent living, then to the brothers and sisters of the intestate and their descendants. When there shall be a widow and no child or children, or descendants of a child or children of the intestate, then the one-half of the real estate, and the whole of the personal estate shall go to such widow, as her exclusive estate forever: subject to her absolute disposition and control, to be governed in all respects by the same rules and regulations as are or may be provided in cases of estates of *femes sole*: if there be no children of the intestate, or descendants of such children, and no parents, brothers or sisters, or descendants of brothers and sisters, and no widow, then such estate shall descend in equal parts to the next of kin to the intestate, in equal degree, computing by the rules of the civil law: and there shall be no representation among collaterals, except with the descendants of the brothers and sisters of the intestate; and in no case shall there be a distinction between the kindred of the whole and the half blood, saving to the widow, in all cases her dower, as provided by law.

SEC. 47. When any *feme covert* shall die intestate, leaving no child or children, or descendants of a child or children, then the one-half of the real estate of the decedent shall descend and go to her husband, as his exclusive estate forever.

SEC. 48. The widow, in all cases, shall be allowed to have and retain, as her sole and separate property, one bed and bedding, the wearing apparel of herself and family, one milch cow and calf, her saddle and bridle, one horse of the value of forty dollars, household and kitchen furniture sufficient for herself and family, and provisions for the same for one year; and also, the same amount and species of property as is, or may be, by law, exempt from execution; said property shall be retained by the widow, and set apart to her by the executor or administrator, and shall in no case be subject to the payment of the debts of the deceased.

SEC. 49. When an inventory shall have been made of the personal estate of any testator or intestate, the widow may relinquish her right to any or all of the specific articles of property allowed to her by the preceding section; or in case the intestate shall not leave any or all of the articles specified, she shall be entitled to other property, or the value of the same in money, and it shall be the duty of the administrator or court of probate, to allow the value of the articles specified by law to be set apart to the widow of any intestate, to be allowed her in money or other personal property at her election.

SEC. 50. The right of a widow to her separate property, shall in no case be affected by her renouncing, or failing to renounce the benefit of the provisions made for her in the will of her husband or otherwise, as provided in chapter thirty-four of the Revised Statutes.

SEC. 51. Where any of the children of a person dying intestate, or their issue, shall have received from such intestate, in his or her lifetime, any real or personal estate, by way of advancement, and shall desire to come into the partition or distribution of such estate with the other parceners or distributees, such advancement,

both of real and personal estate, shall be brought into *hotchpot* with the whole estate, real and personal, of such intestate; and every person so returning such advancement as aforesaid, shall, thereupon, be entitled to his or her just proportion of said estate.

SEC. 52. If any man shall have one or more children by any woman whom he shall afterwards marry, such child or children, if acknowledged by the man, shall, in virtue of such marriage and acknowledgment, be thereby legitimated, and capable in law to inherit and transmit inheritance, as if born in wedlock.

SEC. 53. If any single or unmarried woman, having estate either real or personal, in her own right, shall hereafter die, leaving one or more children, deemed in law illegitimate, such child or children shall not, on that account, be disinherited; but they and each of them, and their descendants, shall be deemed able and capable in law to take and inherit the estate of their deceased mother, in equal parts among them, to the exclusion of all other persons: *Provided*, That if there shall be no such child or children or their descendants, then, and in such case, the estate of the intestate shall be governed by the rules of descent, as in other cases where illegitimates are excluded.

SEC. 54. In all cases where any person shall die intestate, leaving real or personal estate in this State, and a child or children, commonly called posthumous children, shall be born unto him after his decease, within the usual time prescribed by law, such child or children shall come in for their just proportion of said estate, in all respects as though he, she or they had been born in the lifetime of the intestate.

SEC. 55. Administration shall be granted to the husband, upon the goods and chattels of his wife, and to the widow or next of kin to the intestate, or some of them, if they will accept the same, and are not disqualified; but in all cases, the widow shall have the preference; but if no widow or other relative of the intestate, shall apply within sixty days from the death of such intestate, the court of probate may grant administration to any creditor or creditors who shall apply for the same; and in case no such application be made by any creditor or creditors, within fifteen days next ensuing the lapse of the said term of sixty days as aforesaid, administration may be granted to any person or persons whom the judge of probate may think will best manage the estate; and in all cases where such intestate shall have been a non-resident, or without a widow, next of kin, or creditors in this State, but having property within the State, administration shall be granted to the public administrator of the proper county, and to no other person: *Provided*, That no administration shall in any case be granted, until satisfactory proof be made before the court of probate, to whom application for that purpose shall be made, that the person on whose estate letters of administration are requested, is dead, and died intestate, so far as they have knowledge and belief.

SEC. 56. The Governor of this State shall nominate, and by and with the advice and consent of the senate, appoint in each county in this State, where such appointments have not already been made, or as often as any vacancies may occur in the appointments which have heretofore been made under the existing laws, a suitable person, to be known by the name of the public administrator, for such counties respectively, whose office, power and duties shall be prescribed by law.

SEC. 57. Whenever any person shall die intestate, in any county in this State, or when any non-resident shall die intestate, leaving goods and chattels, rights and credits, or either in this State, and no widow or next of kin, or creditor or creditors, shall be living within this State, administration of the goods and chattels,

rights and credits of such intestate, shall be granted to the public administrator of the county in which such intestate died, or in which the goods and chattels, rights, credits and effects shall be found, in case such intestate shall have been a non-resident, and his successors in office.

SEC. 58. In all cases, where any person shall die seized or possessed of any real estate within this State, or having any right or interest therein, and shall have no relative or creditor within this State, or if there be any, who will not administer upon such deceased person's estate, it shall be the duty of the judge of probate, upon the application of any person interested therein, to commit the administration of such estate to the public administrator of the proper county; and such public administrator may be made a party to any suit or proceeding in law or equity, and shall, to all intents and purposes, be liable as the personal representative of such deceased person.

SEC. 59. Each and every public administrator, who may at any time be appointed as aforesaid, shall, before entering upon the duties of his office, take and subscribe the following oath, to-wit: "I, A. B., public administrator in and for the county of _____ and State of Illinois, do solemnly swear, (or affirm,) that I will well and truly perform all such duties as may be required of me by law, as such administrator, to the best of my knowledge and abilities: so help me God." Which said oath shall be taken before the probate justice of the proper county, reduced to writing and subscribed by the public administrator, and filed in the office of the said justice.

SEC. 60. It shall be the duty of the probate justice, upon granting letters of administration to public administrators, to take bond in the same manner as other administrators. And if any public administrator shall neglect or refuse to take out letters of administration, and give bond as aforesaid, within sixty days after it becomes his duty to do so, his office shall be deemed vacant, and upon the certificate of the probate justice of such fact, the Governor shall fill such vacancy.

SEC. 61. In all cases, where administration shall have been granted to any public administrator as aforesaid, and it shall afterwards appear that there is or are, a widow or next of kin, or creditor or creditors of the deceased, entitled to the preference of administration by this chapter, it shall be the duty of the court of probate to revoke the letters granted to such public administrator, and to grant the same to such widow, next of kin, creditor or creditors, as shall or may be entitled thereto: *Provided*, That application shall be made to the court of probate of the proper county, by such person or persons, within six months after letters shall have been granted to the public administrator as aforesaid; saving to such administrator, in all cases, all such sum or sums of money as may be due to him from such estate on account of commission and expenses, due to and incurred by him, in the management of said estate.

SEC. 62. If any balance of any such intestate's estate as may, at any time, be committed to any public administrator as aforesaid, shall remain in the hands of such administrator, after all just debts and charges against such estate shall have been fully paid, which shall have come to the knowledge of such public administrator, for two years after the administration of such estate shall have been committed to him as aforesaid, such administrator shall cause the amount thereof, with the name of the intestate, the time and place of his or her decease, to be published in some one of the public newspapers printed in this State, for eight weeks successively, notifying all persons having claims or demands against such estate, to exhibit the

same, together with the evidence in support thereof, before the court of probate of the proper county, within six months after the date of such notice, or that the same will be forever barred; and if no such claim be presented for payment or distribution within the said time of six months as aforesaid, such balance shall be paid into the public treasury of said county; and the county shall be answerable for the same, without interest, to such person or persons as shall thereafter appear to be legally entitled to the same, if any such shall ever appear.

SEC. 63. Upon the death of any person intestate, not leaving a widow or next of kin, or creditor or creditors, within any county in this State, it shall and may be lawful for the public administrator of the county wherein such person may have died as aforesaid, or wherein the goods and chattels, rights and credits of such decedent shall be, in case such person shall have been a non-resident, to take such measures as he may deem proper for the protecting and securing the property and effects of such intestate from waste or embezzlement, until administration thereon shall be granted to the person entitled thereto as aforesaid; the expenses whereof shall be paid to such public administrator, upon the allowance of the court of probate, in preference to all other demands against such estate, funeral expenses excepted.

SEC. 64. Upon every application for letters of administration upon the goods and chattels, rights and credits of any person dying intestate, by any person not entitled to the same, as husband, widow, next of kin, creditor or creditors, or public administrator, the court of probate to which such application shall be made, shall, before the granting of administration to any such applicant or applicants, cause such applicant or applicants to produce satisfactory evidence that the person or persons having the preference, have relinquished their prior right thereto: *Provided*, Such application shall be made within the space of seventy-five days next ensuing the death of any such intestate as last aforesaid; but if such application be made after the expiration of seventy-five days, it shall not be necessary to make such proof; and the probate justice may proceed to grant letters to such applicant or applicants, or any other person or persons, as he may think fit.

SEC. 65. All letters testamentary, to be hereafter issued to executors under this law, shall be in the following form, to-wit:

STATE OF ILLINOIS, }
COUNTY OF } SCT.

The People of the State of Illinois: To all to whom these presents shall come, Greeting: Know ye, That whereas, A. B., late of the county of and State of Illinois, died, on or about the day of A. D., 18 , as it is said, after having duly made and published his last will and testament, a copy whereof is hereunto annexed, leaving at the time of his death, property in this State, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; and inasmuch as it appears that C. D. has been appointed executor in and by the said last will and testament to execute the same; and to the end that the said property may be preserved for those who shall appear to have a legal right or interest therein, and that said will may be executed according to the request of the said testator; we do hereby authorize him, the said C. D., as such executor, to collect and secure all and singular the goods and chattels, rights and credits, which were of the said A. B., at the time of his decease, in whosoever hands or possession the same may be found in this State; and well and truly to perform and fulfil all such duties as may be enjoined upon him by the said will, so far as there shall be

property, and the law charge him ; and, in general, to do and perform all other acts which now are, or hereafter may be required of him by law. Witness, E. F., probate justice of the said county of _____ at his office in _____ this _____ day of _____ A. D., 18 ____ . E. F., *Probate Justice.* [L. s.]

SEC. 66. The form of letters of administration hereafter to be issued in this State, shall, as near as may be, be as follows, to-wit :

STATE OF ILLINOIS, }
COUNTY OF _____ } ss.

The People of the State of Illinois : To all to whom these presents shall come, Greeting : Know ye, That whereas, A. B., of the county of _____ and State of Illinois, died intestate, as it is said, on or about the _____ day of _____ A. D., 18 ____ , having at the time of his decease, personal property in this State, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same ; to the end, therefore, that said property may be collected and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint C. D., of the county of _____ , and State of Illinois, administrator of all and singular the goods and chattels, rights and credits, which were of the said A. B., at the time of his decease ; with full power and authority to secure and collect the said property and debts, wheresoever the same may be found in this State, and, in general, to do and perform all other acts which now are, or hereafter may be required of him by law. Witness, E. F., probate justice in and for the said county of _____ , at his office in _____ , this _____ day of _____ A. D., 18 ____ . E. F., *Probate Justice.* [L. s.]

And in all cases where letters of administration with the will annexed, letters of administration *de bonis non*, or letters of administration to any public administrator, shall hereafter be issued by any court of probate in this State, the same shall be issued in conformity with the foregoing forms, as nearly as may be, taking care to make the necessary variations, additions or omissions, to suit each particular case.

SEC. 67. The court of probate shall, in all cases, upon granting administration of the goods and chattels, rights and credits of any person dying intestate, require the administrator or administrators, (public administrators excepted,) to take and subscribe the following oath, to-wit : "I do solemnly swear, (or affirm,) that I will well and truly administer all and singular the goods and chattels, rights, credits and effects of A. B., deceased, and pay all just claims and charges against his estate, so far as his goods, chattels and effects shall extend, and the law charge me ; and that I will do and perform all other acts required of me by law, to the best of my knowledge and abilities." Which said oath shall be reduced to writing, subscribed by the person taking the same, before the said probate justice, and filed in his office.

SEC. 68. Each and every administrator, except as is hereinbefore provided for, shall, before entering upon the duties of his office, enter into bond, with good and sufficient security, to be approved by the court of probate, in a sum double the value of the estate, and payable to the people of the State of Illinois, for the use of parties interested, in the following form, to-wit : "Know all men by these presents, that we, A. B., C. D., and E. F., of the county of _____ , and State of Illinois, are held and firmly bound unto the People of the State of Illinois, in the penal sum of _____ dollars, current money of the United States, which payment, well and truly to be made and performed, we, and each of us, bind ourselves, our heirs, executors, administrators and assigns, jointly, severally and firmly by these presents. Witness our hands and seals, this _____ day of _____ , A. D. 18 ____ ."

“The condition of the above obligation is such, that if the said A. B., administrator of all and singular the goods and chattels, rights and credits of J. K., deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits of the said deceased, which shall come to the hands, possession or knowledge of him the said A. B., as such administrator, or to the hands of any person or persons for him; and the same so made, do exhibit, or cause to be exhibited, in the court of probate for the said county of _____, agreeably to law; and such goods and chattels, rights and credits, do well and truly administer according to law, and all the rest of the said goods and chattels, rights and credits, which shall be found remaining upon the account of the said administrator, the same being first examined and allowed by the court of probate, shall deliver and pay unto such person or persons, respectively, as may be legally entitled thereto; and further, do make a just and true account of all his actings and doings therein, when thereunto required by the said court; and if it shall hereafter appear that any last will and testament was made by the deceased, and the same be proved in court, and letters testamentary or of administration be obtained thereon, and the said A. B. do, in such case, on being required thereto, render and deliver up the letters of administration, granted to him as aforesaid, and shall in general do and perform all other acts which may at any time be required of him by law, then this obligation to be void, otherwise, to remain in full force and virtue.” Which said bond shall be signed and sealed by the said administrator and his securities, attested by the probate justice, and filed in his office. And, in all cases, where bonds shall be taken from any administrator *de bonis non*, or in any other case where a form shall not be prescribed in this chapter, the same shall be made, as nearly as may be, in conformity with the form above prescribed, with corresponding variations, to suit each particular case.

SEC. 69. All bonds which may at any time be given by any executor or executors, administrator or administrators, either with or without the will annexed, or *de bonis non*, to collect, or public administrator, may be put in suit and prosecuted against all or any one or more of the obligors named therein, in the name of the people of the State of Illinois, for the use of any person or persons who may have been injured, by reason of the neglect or improper conduct of any such executor or administrator as aforesaid; and such bonds shall not become void on the first recovery thereon, but may be sued upon from time to time, until the whole penalty shall be recovered: *Provided*, That the person or persons for whose use the same may at any time be prosecuted, shall be liable for all costs which may accrue in the prosecution of the same: and certified copies of all such bonds, under the seal of the court of probate, shall be received as evidence, to authorize such recovery in any court of law or equity having jurisdiction thereof in this State.

SEC. 70. The administrator of an executor, or of an administrator, shall enter into a sufficient bond, with approved security, to cover the damages that might accrue by a forfeiture of the same, and shall have power, and he is hereby required, to make final settlement of the unsettled estate, under all the liabilities, and with all the privileges of an administrator *de bonis non*.

SEC. 71. If, at any time after letters of administration have been granted, a will of the deceased shall be produced, and probate thereof granted according to law, such letters of administration shall be revoked and repealed; and letters testamentary, or of administration, with the will annexed, shall be granted in the same manner as if the former letters had not been obtained.

SEC. 72. In all cases where a will, testament or codicil shall have been proved and letters granted thereon as aforesaid, and such will shall thereafter be set aside or annulled by due course of law, the letters granted thereon shall be revoked and repealed, and administration *de bonis non* granted of the goods and chattels unadministered.

SEC. 73. The court of probate shall have power to revoke and repeal all letters testamentary or of administration, granted to persons who shall become insane, lunatic or of unsound mind, habitual drunkards, who may be convicted of any infamous crime, who waste or mismanage the estate, or who conduct themselves in such a manner as to endanger their co-executors, co-administrators or securities: In all which cases, the court shall summon the person or persons charged to be in default or disqualified as aforesaid, to show cause why such revocation should not be made; and when made, the reasons therefor shall be stated at large upon the record, and other letters granted to the next person or persons who shall, according to law, be entitled to the same.

SEC. 74. If any executor of any last will or testament, or administrator of an intestate estate, residing out of this State, at the time of taking upon himself the execution of such trust, or after having done so, shall remove beyond the limits of this State, and shall refuse or neglect, after due notice from the court of probate, to render his accounts and make settlement of such estate, with creditors, legatees or heirs, or their legal representatives, the said court may, in like manner, revoke such letters, and grant other letters thereon to such person or persons as may be entitled to the same, and as to the said court shall seem meet.

SEC. 75. Where the letters of one of several executors or administrators are revoked, or one or more of the executors or administrators shall die or become disqualified, the court of probate may, in its discretion, join others in their stead or place, and require additional bonds from such new administrator or administrators; or the survivor or survivors, or such as shall not have their powers revoked, shall proceed to manage the estate; and in case the letters of all of them shall be revoked, or all of said executors or administrators shall depart this life before final settlement and distribution of the estate shall have been made, administration, with the will annexed, or as the case may require, shall be granted to the persons next entitled thereto; and in all cases where any such executor or administrator shall have his letters revoked as aforesaid, he shall, nevertheless, be liable on his bond, to such subsequent administrator or administrators, or to any other person or persons aggrieved, for any mismanagement of the estate thus committed to his care as aforesaid; and such subsequent administrator or administrators may have and maintain actions of trover, debt, detinue, account, and on the case, against such former executor or administrator, for all such goods, chattels, debts and credits as shall have come to the possession of him or her, and which shall be withheld, or may have been wasted, embezzled or misapplied, and no satisfaction made for the same.

SEC. 76. All the provisions in this chapter, relative to an executor or administrator, shall apply and extend to an executrix or administratrix, or executors or administrators, and *vice versa*, unless otherwise expressly provided for; and whenever any party in the singular number, or a male party is mentioned, the rule shall apply to a female, or two or more having a joint interest, so far as the rule can be with propriety applied, and so far as is not otherwise directed.

SEC. 77. No executor or administrator, or security for an executor or administrator shall be chargeable beyond the assets of the testator or intestate, by reason of

any omission or mistake in pleading, or false pleading of such executor or administrator.

SEC. 78. If any court of probate shall hereafter grant letters testamentary or of administration, of the estate of any person deceased, without taking good security for the same as aforesaid, or if the security so taken shall afterwards become insufficient, and in all cases where such security has been heretofore taken, and now has, or shall hereafter become insufficient as aforesaid, it shall be lawful for the said court, on the application of any person entitled to distribution, a creditor, or otherwise interested in such estate, to require such executor or administrator to give other and sufficient security; and in default thereof, the letters testamentary or of administration shall be revoked, and administration granted to the person entitled to the same, according to the rules hereinbefore prescribed in the case of an administrator *de bonis non*; and all acts done and performed according to law, by the executor or administrator, whose letters testamentary or of administration may be revoked as aforesaid, prior to such revocation, shall be valid and effectual.

SEC. 79. When securities for executors or administrators, or their representatives, may conceive themselves in danger of suffering by the mismanagement of such executors or administrators, and petition the court of probate for relief, in writing, setting forth the cause of such apprehension, the said court shall examine such petition, and if the court shall deem the causes therein stated and set forth, sufficient to entitle such petitioner or petitioners to relief, if true, he shall summon such executor or administrator, to show cause against such petition; and may thereupon dismiss the same, or direct such executor or administrator, in his discretion, either to give good counter security to save such petitioner or petitioners harmless, or to give a new bond in the like penalty as the first; and such new bond shall have relation back to the time of granting letters testamentary or of administration, and shall be as effectual in every respect, as if the same had been executed before such letters had been granted; and upon refusal or neglect to give bond *de novo*, or counter security as aforesaid, the letters granted to such executor or administrator may be revoked, and letters of administration with the will annexed, or *de bonis non*, granted thereon as aforesaid.

SEC. 80. In all cases, where a new bond shall be required to be given by an executor or administrator as aforesaid, the formal part of the bond shall be as heretofore prescribed, with a condition therefo, in the following form, to-wit: "The condition of the above obligation is such, that whereas, the above bounden, A. B., executor of the last will and testament of J. K., deceased, (or administrator of the goods and chattels, rights and credits of J. K., deceased,) has heretofore executed a bond, payable to the people of the State of Illinois, and conditioned for the discharge of his duties as executor, (or administrator,) as aforesaid, which said bond bears date on the day of A. D., 18 *: and whereas, by an order of the court of probate, made on the day of A. D., 18 other bond and security has been required of the said executor, (or administrator:) Now, therefore, if the said executor, (or administrator,) shall well and truly have kept and performed, and shall well and truly keep and perform the condition of the bond first given as aforesaid, in all respects according to law, and shall in all respects have performed, and shall continue to perform, the duties of his office aforesaid, then this obligation to be void: otherwise, to remain in full force and virtue." Which bond shall be signed, sealed, attested and filed, in all other respects as aforesaid.

SEC. 81. In every case, wherein letters testamentary, of administration, or of collection are granted, it shall be the duty of the executor or administrator to make out a full and perfect inventory of all such real and personal estate, or the proceeds thereof, as shall be committed to his superintendence and management, and as shall come to his hands, possession or knowledge, whether the same shall consist in lands, tenements, hereditaments, annuities or rents, or in goods and chattels, and rights and credits, particularly specifying the nature and amount of each, or both, as the case may require, and noting distinctly the amount in money on hand, the nature of each debt due to the deceased; and whether the same be separate, doubtful or desperate, which said inventory shall be returned to the office of the probate justice within three months from the date of the said letters testamentary or of administration as aforesaid.

SEC. 82. On granting any letters testamentary or of administration as aforesaid, a warrant or warrants shall issue, under the seal of the court of probate, authorizing three persons of discretion, not related to the deceased, nor interested in the administration of the estate, to appraise the goods, chattels and personal estate of the deceased, known to them, or to be shown by the executor or administrator; which warrant shall be in the following form, to-wit: "The People of the State of Illinois, to A. B., C. D., and E. F., of the county of _____ and State of Illinois, Greeting: This is to authorize you, jointly, to appraise the goods, chattels and personal estate of J. K., late of the county of _____ and State of Illinois, deceased, so far as the same shall come to your sight and knowledge; each of you having first taken the oath (or affirmation) hereto annexed; a certificate whereof you are to return, annexed to an appraisement bill of said goods, chattels and personal estate, by you appraised, in dollars and cents; and in the said bill of appraisement you are to set down in a column or columns, opposite to each article appraised, the value thereof. Witness, L. M., probate justice for the said county of _____ at his office in _____ this _____ day of _____ A. D., 18 _____

L. M., *Probate Justice.*" [L. s.]

For which said warrant the probate justice shall receive the sum of twenty-five cents, and no more. And on the death, refusal to act, or neglect of any such appraiser, another warrant, in form as aforesaid, may forthwith issue in its stead.

SEC. 83. The appraisers, before they proceed to the appraisement of the estate, shall take the following oath, (or affirmation,) to be annexed to, or indorsed on the warrant of appointment as aforesaid, before any person authorized to administer an oath, viz: "You, and each of you, do solemnly swear, (or affirm,) that you will well and truly, without partiality or prejudice, value and appraise the goods, chattels and personal estate of J. K., deceased, so far as the same shall come to your sight and knowledge; and that you will in all respects perform your duty as appraisers to the best of your skill and judgment." After which, the said appraisers shall proceed as conveniently as may be, to the discharge of their duty, and shall set down each article, with the value thereof, in dollars and cents as aforesaid. All the valuations shall be set down on the right hand side of the paper in one or more columns, in figures, opposite to their respective articles of property, and the contents of each column shall be cast up, and set at the foot of each column respectively.

SEC. 84. When the bill of appraisement shall be completed, the appraisers shall certify the same under their hands and seals, with a certificate of the oath, (or affirmation,) to be taken by them, thereto annexed; and shall deliver the same into

the hands of the executor or administrator, to be by him returned into the office of the probate justice, within three months from the date of his letters testamentary or of administration.

SEC. 85. Inventories and bills of appraisement, and authenticated copies thereof, may be given in evidence in any suit, by or against the executor or administrator, but shall not be conclusive for, or against him, if any other testimony be given, that the estate was really worth, or was, *bona fide*, sold for more or less than the appraised value thereof.

SEC. 86. Whenever personal property of any kind, or assets, shall come to the possession or knowledge of any executor or administrator, which shall not have been mentioned and included in the inventory and bill of appraisement as aforesaid, an account or inventory of the same shall be returned to the office of the probate justice, appraised by three disinterested, sworn appraisers as aforesaid, within three months after discovery shall be made of the same.

SEC. 87. Each and every appraiser appointed under this chapter, shall be entitled to the sum of seventy-five cents per day for each day's necessary attendance in making all such appraisements and bills thereof as aforesaid, to be allowed by the court of probate, and paid upon its order by the executor or administrator, and charged to the account of the estate.

SEC. 88. When the estate of any testator or intestate shall have been appraised, and the same shall be ascertained to be entirely solvent, and free from debt or incumbrance, or where there shall be a sufficiency of money or assets in the hands of the executor to pay such debts, independent of the property mentioned in such inventory and bill of appraisement, it shall be lawful for the widow to make her election, whether she will take that part of the personal estate to which she may be entitled by right of dower or otherwise, out of the articles mentioned in such bill of appraisement, according to the appraised value thereof, or the amount thereof in money, whenever the same shall be sold and the money collected therefor; or she may take a part in property and a part in money, as she may prefer. And, in all such cases, it shall be the duty of the executor or administrator, to notify the widow as soon as such appraisement shall be made, and to set apart to her, such article or articles of property, not exceeding the amount to which she may be entitled, and as she may prefer or select, within thirty days after written application shall be made for that purpose by such widow: And if any such executor or administrator shall neglect or refuse to comply with the foregoing requisition, when application shall be made for that purpose, he shall forfeit and pay for the use of such widow, the sum of twenty dollars per month, for each month's delay to set apart said property so selected, after the said term of thirty days shall have elapsed, to be recovered in the name of the people of the State of Illinois, for the use of such widow, in any court having jurisdiction of the same.

SEC. 89. Executors and administrators shall, in addition to the inventory and bill of appraisement required to be made as aforesaid, make a further inventory from time to time, of all moneys, judgments, bonds, promissory notes, open accounts or other evidences of debt: also, of his titles to estates, both real and personal, as well equitable as legal, specifying the kind, quantity, quality, situation and value of such real estate, by what title held, and from whom purchased, if known; the debts appearing to be due, or to become due to such testator or intestate, the names of the person by whom owing, date of the contracts, and amount of interest accruing on the same, with such other and further description of the said estate, the books,

papers and evidences of title, so as to make the same as full and perfect as possible; which said inventory, when made, shall be filed in the office of the probate justice, as is required in other cases by this chapter.

SEC. 90. If any executor or administrator, or other person interested in any estate, shall state upon oath to any court of probate, that he believes that any person has in possession, or has concealed or embezzled any goods, chattels, moneys or effects, books of account, papers or any evidences of debt whatever, or titles to land, belonging to any deceased person, the court shall require such person to appear before it by citation, and may examine him on oath, touching the same, and if such person shall refuse to answer such proper interrogatories as may be propounded by the court, or person interested as aforesaid, or shall refuse to deliver up such property or effects as aforesaid, upon a requisition being made for that purpose by an order of the said court of probate, such court may commit such person to jail, until he shall comply with the order of the court therein.

SEC. 91. The books of account of any deceased person, shall be subject to the inspection of all persons interested therein.

SEC. 92. Executors and administrators shall be chargeable with so much of the estate, whether real, personal or mixed, or the proceeds thereof, of their testator or intestate, as they, after due and proper diligence, shall recover and receive.

SEC. 93. In all cases, where power is or may be given in any will, to sell and dispose of any real estate, or interest therein, and the same be sold and disposed of in the manner, and by the persons appointed in such will, the sales shall be good and valid; and where one or more executors shall depart this life before such sales be made, the survivor or survivors shall have the same power, and their sales shall be good and valid as though they all joined in such sale.

SEC. 94. No executor or administrator shall, under any pretence whatever, remove any property whatsoever, wherewith such administrator or executor may be charged by virtue of his letters, beyond the limits of this State; and in case any such executor or administrator shall remove such property, it shall be the duty of the court of probate, forthwith to revoke his letters, and to cause a suit to be instituted on his bond, against him and his securities, for the use of the persons interested in said estate; and the jury trying such cause shall, on satisfactory evidence of the removal of the property as aforesaid, render a verdict against the offender and his securities, for the full value thereof, and such other damages as the parties interested may have sustained by reason thereof; and letters of administration on said estate shall issue to the next person or persons entitled, as in other cases.

SEC. 95. It shall be the duty of each and every administrator or executor, to fix on a certain term of the court of probate, within nine months from the time of his or her being qualified as such administrator or executor, for the settling and adjusting all claims against such decedent, and give notice thereof in some public newspaper within this State, as required by law: and also, by putting up a written or printed notice on the door of the court house, and in five other of the most public places in the county, notifying and requesting all persons having claims against said estate, to attend at said term of the probate court, for the purpose of having the same adjusted; said notice to be given at least six weeks previous to said day, when and where such claimant shall produce his or her claim in writing; and if no objection be made to said claim, by the administrator, widow, guardian, heirs or others, interested in said estate, the claimant shall be permitted to swear that such claim is just and unpaid, or that the same is correct, after allowing all just credits; and if objec-

tions be made to said claim, previous to said claim being sworn to, the account shall be adjudicated as is now required by law. All persons who do not avail themselves of the opportunity of having their claims adjudicated at the said term of the court, shall have power to proceed against the executor or administrator, as is now prescribed by law: *Provided*, That estates shall be answerable for the costs on the claims filed at or before said term, but not after: *And, provided further*, That no execution shall be issued against any executor or administrator, for the term of one year from the date of his or her letters testamentary or of administration.

SEC. 96. The executor or administrator shall, as soon as convenient, after making the inventory and appraisal, as hereinbefore directed, sell at public sale, all the personal property, goods and chattels of the testator or intestate, not reserved to the widow as aforesaid; and also, excepting specific legacies and bequests, where the estate is sufficient to discharge the debts, over and above such specific legacies and bequests; upon giving three weeks' notice of the time and place of such sale, by at least four advertisements, set up in the most public places in the county where the sale is to be made, or by inserting an advertisement in the nearest and most public newspaper printed in this State, to the place of such sale, at least four weeks successively, previous thereto, upon a credit, of not less than six nor more than twelve months, by taking bond with good security of the purchasers at such sale: *Provided*, That such executor or administrator may make it a part of the condition of such sale, that purchases under the sum of five dollars, shall be paid in hand: *And, provided further*, That if any testator shall direct that his estate shall not be sold, the same shall be preserved in kind, and distributed accordingly, unless such sale should become absolutely necessary, for the payment of the debts and charges against the estate of such testator.

SEC. 97. If any executor or administrator shall be of opinion that it would be of advantage to the estate of the testator or intestate, to dispose of the crop growing at the time of his or her decease, the same shall be inventoried, appraised and sold, at the same time, and in the same manner as is directed in the preceding section; but if such executor or administrator shall believe that it would be of more advantage to the estate, to go on and finish the same previous to such sale, he shall be authorized so to do: and the proceeds of such crop, after deducting all necessary expenses for cultivating, gathering and making sale of the same, shall be assets in the hands of such executor or administrator, and subject to the payment of debts and legacies, and to distribution as aforesaid.

SEC. 98. In all public sales of property, made in pursuance of this chapter as aforesaid, the executor or executors, administrator or administrators, may employ the necessary clerks and a crier, who shall be allowed such compensation, not exceeding two dollars per day, as the court of probate may judge reasonable, to be paid by such executors or administrators, and charged to the estate. All such sales shall be made between the hours of ten o'clock in the forenoon, and five o'clock in the afternoon of each day; and any such as shall be made before or after the time herein limited, shall be void.

SEC. 99. All executors and administrators shall, immediately after making such sales as aforesaid, make, or cause to be made, a bill of the sales of said estate, describing particularly, each article of property sold, to whom sold, and at what price; which sale bill, when thus made and certified by the clerk of such sale and the crier thereof, as true and correct, shall be returned into the office of the probate justice in the like time as is required in cases of inventories and appraisements.

SEC. 100. Any creditor, whose debt or claim against the estate is not due, may, nevertheless, present the same for allowance and settlement, and shall, thereupon, be considered as a creditor under this chapter, and shall receive a dividend of the said testator's estate, after deducting a rebate of interest for what he shall receive on such debt, to be computed from the time of the actual payment thereof to the time such debt would have become due, according to the tenor and effect of the contract.

SEC. 101. No action shall be maintainable against any executor or administrator for any debt due from the testator or intestate, until the expiration of one year after the taking out of letters testamentary or of administration, except as is herein excepted; nor shall any person, suing after that time, recover costs against such executor or administrator, unless a demand be proved before the commencement of such suit; but in all other cases, both executors and administrators shall be liable to pay costs as other persons.

SEC. 102. No suit shall be brought against any executor or administrator, for or on account of any claim or demand against the testator or intestate, unless such suit shall be brought within one year next after such executor or administrator shall have settled his accounts with the court of probate.

SEC. 103. When any executor or administrator, whose testator or intestate shall have died seized of any real estate in this State, shall discover that the personal estate of such testator or intestate is insufficient to pay the just claims against his or her estate, such executor or administrator shall, as soon as conveniently may be, make a just and true account of the said personal estate and debts, as far as he or she can discover the same, and shall make out a petition to the circuit court of the county in which administration shall have been granted, stating therein, what real estate the said testator or intestate died seized of, or so much thereof as will be necessary to pay his or her debts as aforesaid, and request the aid of the said court in the premises; and it shall also be the duty of such administrator or executor, to give at least thirty days' notice of the time and place of presenting such petition, by serving a written notice of the same, together with a copy of said account and petition, on each of the heirs or their guardians, or devisees of said testator or intestate, or by publishing a notice in the nearest newspaper for three weeks successively, commencing at least six weeks before the presenting of said petition, of the intention of presenting the same to the circuit court, for the sale of the whole, or so much of the real estate of the said testator or intestate, as will be sufficient to pay his or her debts, and requesting all persons interested in said real estate, to show cause why it should not be sold for the purposes aforesaid.

SEC. 104. It shall be the duty of the said circuit court, at the time and place specified in the notice aforesaid, or at such other time as the said court shall appoint, to hear and examine the allegations and proofs of such executor or administrator, and of all such other persons interested in said estate, as may think proper to resist such sale; and if, upon due examination, the said circuit court shall ascertain that the said personal estate of such testator or intestate is not sufficient for the payment of his or her debts, the said court shall order and direct the whole, if necessary, but if not; then so much of the said estate, from time to time, as will be sufficient to pay such debts, to be sold as is hereinafter directed; and when a part only of such estate is ordered to be sold, such order shall specify as particularly as may be, the part so ordered to be sold: *Provided, always,* That where any houses and lots, or other real estate are so situated, that a part thereof can not be sold without manifest prejudice to the heirs or devisees, such court may, in its discretion, order the sale of the

whole, or such part thereof as shall be necessary for the payment of debts; and the overplus arising from such sale shall be distributed among the heirs and devisees, or such other person or persons as may be entitled thereto.

SEC. 105. All sales of any such real estate, directed to be made as aforesaid, shall be made, and conveyances executed for the same, by the executor or administrator applying for such order; which said conveyances shall set forth such order at large, and shall be valid and effectual against the heirs and devisees, of such testator or intestate, and all other persons claiming by, through or under him, her or them.

SEC. 106. No lands or tenements shall be sold by virtue of any such order of the circuit court as aforesaid, unless such sale be at public vendue, and between the hours of ten o'clock in the forenoon, and five o'clock of the afternoon of the same day; nor unless the time and place of holding such sale shall have been previously published for the space of six weeks successively, by putting up notices thereof, in at least four of the most public places in the county where such real estate shall be sold; and also by causing a similar notice thereof to be published in the nearest newspaper in this State; nor unless such real estate shall be described with common certainty in the said advertisements: And if any executor or administrator, so ordered to make sale of any real estate as aforesaid, shall sell the same contrary to the provisions of this chapter, he shall forfeit and pay the sum of five hundred dollars, to be recovered by action of debt, in the name of the people of the State of Illinois, for the use of any person interested, who may prosecute for the same: *Provided*, That no such offence shall be deemed to affect the validity of such sale: *And, provided further*, That it shall be lawful for such executor or administrator to sell the same on a credit, of not less than six, nor more than twelve months, by taking bond with good security, for the payment of the purchase money, and by taking a mortgage on said land.

SEC. 107. In all cases, where a petition shall be presented for the sale of any real estate, and one or more of the devisees or heirs of the testator or intestate shall be infants, and without a guardian resident in the county in which such petition shall be preferred, the circuit court to which the same shall be presented, shall appoint some discreet person as guardian *ad litem*, for the purpose of appearing for, and defending the interest of such infant or infants in the proceedings therein.

SEC. 108. No part of the real estate of any testator or intestate, shall be ordered to be sold, unless the executor or administrator applying for such order, shall have made and filed an inventory, appraisal bill, and sale bill, in the office of the probate justice; nor unless such executor or administrator shall have first applied the personal estate, or proceeds thereof, or such part thereof as shall have come to his possession, towards the payment of the debts of the said testator or intestate.

SEC. 109. Any person or persons claiming to be aggrieved by any judgment, decree or order, for the sale of any such real estate as aforesaid, may appeal from the same to the supreme court of this State: *Provided*, Such appeal be entered during the term in which such judgment, decree or order shall be made.

SEC. 110. When any real estate shall, at any time, be ordered to be sold, the moneys arising from such sale shall be received by the executor or administrator applying for such order, and shall be considered as assets in his or her hands for the payment of debts; and shall be applied in the same manner as assets arising from the sale of personal property.

SEC. 111. In all cases, where any testator or intestate now deceased, or shall hereafter die seized of any lands, the payment whereof has not been completed to

the United States, and the estate of such decedent is, or shall be unable to make complete payment therefor, with advantage to such estate, it shall be lawful for the administrator, executor or other legal representatives of such deceased, to sell or dispose of the certificate or certificates of entry, or further credit of the same, in such manner as they may deem most advisable for the interest of such estate; and the money arising from such sales, shall be assets in the hands of such executor or administrator, as in other cases.

SEC. 112. But in all cases where the estate of any such testator or intestate shall be solvent, and such lands as aforesaid may be patented without prejudice to the estate, it shall be the duty of the executor or administrator to complete the payment for the same, by relinquishment or out of the proceeds of the personal property, as the case may require, in the name of the heirs or legal representatives of the decedent, entitled thereto: and he shall be allowed a credit for the amount of such payments, and all reasonable expenses incurred in making the same, upon final settlement of such estate: *Provided*, That the provisions of this, and the preceding section shall, in nowise, interfere with the provisions of any last will or testament as aforesaid.

SEC. 113. In all cases where the lands, or certificates of entry or purchase, of any testator or intestate, on which partial payments shall have been made as aforesaid, have, or shall hereafter, become forfeited to the United States for the non-payment thereof; or where any deposit or deposits, or payments of money, by way of entry or purchase of any such lands, or securing the preference of purchase thereof, shall have been made by such testator or intestate, at any of the land offices in this State, and the same have, or shall at any time hereafter, become forfeited to the United States, for the non-payment of the residue due, or to become due on said lands; and where the Congress of the United States has made, or shall hereafter make provision for a further extension of credit, or for the repayment of the sums thus forfeited, to the payors thereof, or to their legal representatives, either by the issuing of scrip, granting of lands, or by the actual return of the money thus paid as aforesaid; or shall, in any other manner, provide for the relief of such purchaser or purchasers, it shall be lawful for the executor or administrator, or the legal representatives of such testator or intestate, to avail themselves of such provision or relief, for the use of the estate, in like manner as such testator or intestate might or could do, if living at the time; and all such sums of money as may be produced by the sale of any such forfeited certificate or deposits, or such scrip as may be received in lieu thereof, and all such sums as shall be repaid in money as aforesaid, on account of any such forfeitures, shall be considered as assets in the hands of such executor or administrator, and shall be accounted for accordingly.

SEC. 114. Whenever any estate is found to be insolvent, it shall be so entered of record by the probate justice, and after such order so made, no action shall be maintained against the executors or administrators, except at the costs of the party suing: but persons entitled, shall receive their proportions of said estate, in the manner herein provided for: and whenever the real estate shall be required to be sold for the payment of debts, no suit shall be maintained, until the money is received for such real estate, and an order made by said court, directing the executor or administrator to pay out the same, as required in this chapter. And the court of probate may make all necessary orders to coerce the executor or administrator to make immediate application to the circuit court for the sale of such real estate.

SEC. 115. All demands against the estate of any testator or intestate shall be divided into classes, in manner following, to-wit: *First*: All funeral and other expenses attending the last sickness, shall compose the first class. *Second*: All expenses of proving the will, and taking out letters testamentary or of administration, and settlement of the estate, and the physician's bill in the last illness of the deceased, shall compose the second class. *Third*: Where any executor, administrator or guardian has received money as such, his executor or administrator shall pay out of his estate, the amount thus received and not accounted for, which shall compose the third class. *Fourth*: All other debts and demands of whatsoever kind, without regard to quality or dignity, which shall be exhibited within two years from the granting of letters as aforesaid, shall compose the fourth and last class. And all demands not exhibited within two years as aforesaid, shall be forever barred, unless such creditor shall find other estate of the deceased, not inventoried or accounted for by the executor or administrator; in which case, his claim shall be paid, *pro rata*, out of such subsequently discovered estate; saving, however, to *femes covert*, infants, persons of unsound mind, or imprisoned, or beyond the seas, the term of two years after their respective disabilities be removed, to exhibit their claims.

SEC. 116. The manner of exhibiting claims against the estate of any testator or intestate, may be by serving a notice of such claim on the executors or administrators, or presenting them the account, or filing the account, or a copy thereof, with the court of probate.

SEC. 117. When a claim shall be filed, or suit brought, against any such executor or administrator, and it shall appear on trial, that such claimant or plaintiff is indebted to such executor or administrator, it shall be lawful for such court of probate to give judgment therefor, and issue an execution, or any other final process, which a justice of the peace might issue in like cases.

SEC. 118. Persons having claims against estates, upon giving the executor or administrator ten days' notice of the time they intend to present the same to said court, the court, upon examination, shall allow or reject such claims: *Provided*, The court may allow further time for either party to produce other or further evidence in his favor: *Provided, also*, That judgments regularly obtained, and a copy thereof duly certified and filed with the court of probate, shall be taken as duly proven; and all instruments in writing, signed by the testator or intestate, if the hand writing be proven, and nothing be shown to the contrary, shall be deemed duly proved.

SEC. 119. No person making a claim against the estate of any testator or intestate, shall be permitted to prove the same by his or her own oath, except in cases specified in section ninety-five hereof: but said court may, in its discretion, before giving judgment against any executor or administrator, require the claimant to make oath that such claim is just and unpaid: *Provided*, That the amount of such judgment shall not be increased upon the testimony of the claimant.

SEC. 120. All claims and demands against estates, when allowed by the court of probate as aforesaid, shall be classed and paid by the executor or administrator, in the manner provided in this chapter, commencing with the first class; and when the estate is insufficient to pay the whole of the demands, such demands in any one class shall be paid, *pro rata*, whether the same shall be due by judgment, writing obligatory or otherwise, except in such cases as shall be herein excepted.

SEC. 121. When any executor or administrator shall have any demand against his testator or intestate's estate, he shall be required to file his demand with the court

of probate, as other persons; and the court shall appoint some discreet person to appear and manage the defence for the estate; and upon a final hearing, said court shall allow said demand, or such part thereof as shall be legally established, or reject the same, as to said court shall appear just. Should an executor or administrator appeal in such case, the court of probate shall appoint some person to defend as aforesaid.

SEC. 122. The court of probate shall make an entry of all demands allowed against estates, and file and preserve the papers belonging to the same, and shall, also, class said demands as is required by this chapter; and when any executor or administrator shall pay any claim before the same is allowed as aforesaid, said court shall require such executor or administrator to establish the validity of such claim by the like evidence as is required in other cases, before the same is classed and he credited therewith.

SEC. 123. All executors and administrators shall exhibit accounts of their administration, for settlement, to the court of probate from which the letters testamentary or of administration were obtained, at the first term thereof which shall happen after the expiration of one year after the date of their letters as aforesaid; and in like manner every twelve months thereafter, or sooner, if required, until the duties of their administration be fully completed.

SEC. 124. Upon each and every settlement of the accounts of any executor or administrator, as provided by this chapter, it shall be the duty of the court, to ascertain the whole amount of moneys which shall have come into the hands of such executor or administrator, belonging to the estate of the deceased, and the whole amount of debts established against such estate; and if there be not sufficient to pay the whole of the debts, the moneys aforesaid shall be appropriated among the several creditors, *pro rata*, according to their several rights, as established by this chapter; and thereupon, the court shall make an order, directing such executor or administrator to pay the claims which have been allowed by the court, according to such apportionments; and the court, upon each and every settlement, shall proceed in like manner, until the whole debts be paid, or the assets exhausted.

SEC. 125. Whenever it shall appear that the personal estate of any person deceased, is insufficient to discharge the debts of such estate, and there is real estate belonging to the same, the court of probate shall make out such an abstract from its records, of the debts and credits of such estate, and of the lands owned by such testator or intestate, from the inventory of such estate, whether the title be complete or not; which abstract shall be presented to the circuit court, by the executor or administrator, who may then obtain an order to sell the same in the manner hereinbefore directed; and the proceeds of such sales shall be assets in the hands of such executor or administrator, for the payment of debts, and be subject to the same order, by the court of probate, in the payment of debts, as other assets.

SEC. 126. If any executor or administrator shall fail or refuse to pay over any moneys or dividend to any person entitled thereto, in pursuance of the order of the court of probate, lawfully made, within thirty days after demand made for such moneys or dividend, the court of probate, upon application made, shall attach such delinquent executor or administrator, and may cause him to be imprisoned until he shall comply with the order aforesaid, or until such delinquent is discharged by due course of law; and moreover, such failure or refusal on the part of such executor or administrator, shall be deemed and taken in law to amount to a *devastavit*, and an action upon such executor's or administrator's bond, and against his or their securi-

ties, may be forthwith instituted and maintained; and the failure aforesaid to pay such moneys or dividend, shall be a sufficient breach to authorize a recovery thereon.

SEC. 127. Whenever it shall appear that there are sufficient assets to satisfy all demands against the estate, the court of probate shall order the payment of all legacies mentioned in the will of the testator, the specific legacies being first satisfied.

SEC. 128. Where any heir of an intestate has received money, goods, chattels or real estate, from such intestate, if the amount so received shall be charged to such heir by said intestate, the same shall be taken into computation in making distribution of the estate upon being brought into *hotchpot*, as aforesaid: *Provided*, That an heir who has received from the intestate, more than his share, shall in no case be required to refund.

SEC. 129. Executors and administrators shall not be compelled to pay legatees or distributees, until bond and security be given by such legatees or distributees, to refund the due proportion of any debt which may afterwards appear against the estate and the costs attending the recovery thereof: such bond shall be made payable to such executor or administrator, and shall be for his indemnity, and filed in the court of probate.

SEC. 130. When, at any time after the payment of legacies or distributive shares, it shall become necessary that the same or any part thereof be refunded for the payment of debts, it shall be the duty of the court of probate, on application made, to apportion the same among the several legatees or distributees, according to the amount received by them, except the specific legacies, which shall in no case be required to be refunded, unless the residue be insufficient to satisfy such debts; and if any distributee or legatee shall refuse to refund, according to the order of the court of probate, made as aforesaid, within sixty days thereafter, and upon demand made, such refusal shall be deemed a breach of his bond given to the executor or administrator as aforesaid, and an action may be instituted thereon to the use of such party entitled; and in all cases where there may be no bond, an action of debt may be maintained against such distributee or legatee, and the order of the court of probate shall be evidence of the demand.

SEC. 131. Where there are two or more executors or administrators of an estate, and any one of them take all or a greater part of such estate, and refuse to pay the debts of the testator or intestate, or refuse to account with the other executors or administrators, in such case the executor or administrator so aggrieved, may have his action of account, or suit in equity, against such delinquent executor or administrator, and recover such proportionate share of said estate as shall belong to him; and every executor, being a residuary legatee, may have an action of account, or suit in equity, against his co-executor or co-executors, and recover his part of the estate in his or their hands; and any other legatee may have the like remedy against the executors: *Provided*, That before any action shall be commenced for legacies as aforesaid, the court of probate shall make an order directing them to be paid.

SEC. 132. Actions of trover, detinue or replevin, shall survive for and against executors and administrators, and may be maintained in the same manner and with like effect as such actions could be for or against their testator or intestate, if living.

SEC. 133. When the mortgagee of any lands or tenements shall die, leaving minor heirs, the executors or administrators of such mortgagee shall be, and they are hereby authorized, on receiving the amount due the estate of such deceased mortgagee, to release to the mortgagor the legal title of the said mortgaged premises; and such deed of release shall be valid.

SEC. 134. Real estate may be mortgaged or leased by executors or guardians : *Provided*, Such mortgage or lease shall not be for a longer term than until the heir entitled to such estate shall attain the age of twenty-one years, if a male, or eighteen years, if a female.

SEC. 135. Before any mortgage or lease shall be made as aforesaid, the executors or guardians shall petition the court of probate for an order authorizing such mortgage or lease to be made, and which the court may grant, if the interests of the estate may require it : *Provided*, That the executor or guardian making application as aforesaid, upon obtaining such order, shall enter into bond with good security, faithfully to apply the moneys to be raised upon such mortgage or lease, to the payment of the debts of the testator, or for the benefit of the ward or wards of such guardian : And all moneys so raised, shall be assets in the hands of such executor for the payment of debts, and shall be subject to the order of the court of probate, in the same manner as other assets, or shall be applied to the use of such ward or wards, where the same shall be received by a guardian as aforesaid.

SEC. 136. Executors and administrators shall be allowed, as a compensation for their trouble, a sum, not exceeding six per centum on the whole amount of personal estate, and not exceeding three per cent. on the money arising from the sales or letting of land, with such additional allowances for costs and charges in collecting and defending the claims of the estate, and disposing of the same as shall be reasonable.

SEC. 137. If any executor or administrator shall fail to comply with the provisions of this chapter, or shall fail to comply with any or all of the covenants in his bond, an action may be forthwith instituted and maintained upon such bond, against the principal or securities, or both ; and the failure aforesaid shall be a sufficient breach to authorize a recovery, in the same manner as though a *devastavit* had been previously established against such executor or administrator.

SEC. 138. Appeals shall be allowed from all judgments, orders or decrees of the court of probate, to the circuit court, in favor of any person who may consider himself or herself aggrieved by any judgment, order or decree of the court of probate as aforesaid, and from the circuit court to the supreme court, as in other cases.

SEC. 139. The courts of probate, respectively, shall have power to enforce due observance of all orders, decisions, judgments and decrees which shall, at any time, be made in the discharge of their official duties, and may issue attachments for any contempt offered such court, or its process, by any executor, administrator, witness or other person or persons ; and may fine and imprison, or either, all such offenders, in the same manner as the circuit courts may or can do, in all similar cases, except in such cases as have been hereinbefore provided for : *Provided*, That the fine inflicted in such cases shall in no instance exceed the sum of fifty dollars, nor shall any such imprisonment be extended beyond the term of twenty days.

SEC. 140. For the purpose of enabling the courts of probate respectively, to execute the powers vested in them by this chapter, it shall be the duty of the sheriff of each county in which such courts shall be held, when required by the court of probate, to attend all regular and special sittings of said court, either by himself or deputy, and to keep and preserve good order in the same ; and also, to serve and execute all writs of attachment, summonses, subpoenas, citations, notices and other processes, which may, at any time, be legally issued by such court of probate, and to make due return thereof. And all such sheriffs shall be entitled to the same fees

and compensation as is, or may be allowed for the time being, for the performance of similar services in the circuit courts, to be taxed and allowed by the court of probate, against the county, party liable, or delinquent, (as near as may be applicable,) according to the rules and practice in the circuit courts respectively.

SEC. 141. In all cases where executors and administrators have been heretofore appointed, and who shall not have completed their respective administrations or executorships, before this chapter takes effect, such executors or administrators shall be deemed to be within the provisions of this chapter, in relation to the revocation of their powers. giving of new or additional bonds, bonds to save securities harmless, and in relation to the payment of debts to creditors, and the remainder of the estate to the distributees, and in relation to the performance of their duties generally, whenever the provisions of this chapter shall be deemed applicable: And the courts of probate, in such cases, shall cause the settlements to be made, and the administrations completed, according to the rules and regulations herein prescribed, without delay.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Acts Nos. 34, 35, 36 and 37.]

CHAPTER CX.

WOLVES.

SECTION

1. County commissioners' courts may allow bounties on wolf scalps; certificates thereof

SECTION

receivable for taxes due the county from the commissioners' court, from which it issued.

SECTION 1. The county commissioners' court of any county in this State, may hereafter allow such bounty on the big wolf and prairie wolf, of six months old and upwards, as said court may deem reasonable; said bounty to be paid out of the treasury of the county wherein said wolf or wolves may be taken and killed, upon the certificate of the county commissioners' court; and said certificate shall be receivable by the collector of the county wherein such allowance of bounty may have been made, for any taxes due said county.

APPROVED: March 3, 1845.

[AMENDED:—See Appendix, Act No. 38.]



APPENDIX

TO THE

REVISED STATUTES.



APPENDIX.

THE following acts, to No. 47, inclusive, embrace all laws of the General Assembly of 1844-5, of a general and public nature, the subjects whereof were not revised nor incorporated in the several chapters composing the Revised Statutes. [See chap. 90, sec. 5; *ante*, 470.] They amend or contravene certain provisions of the chapters to which they refer; and so far as they do so, they operate as a modification or repeal of such provisions. [See chap. 90, sec. 22; *ante*, 472.]

And the remainder of the numbered acts, embrace various laws, passed at sessions of the General Assembly, previous to the last, which remain unrepealed, and are not incorporated in the foregoing chapters; and which affect, and are necessary to the full understanding of the matters comprised in those chapters, or which remain in operation, and are of general public interest. [See chap. 90, sec. 6; *ante*, 470.]

ACT, NUMBER I.

AN ACT TO PROVIDE FOR CANCELING AUDITOR'S WARRANTS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the third section of an act to amend an act, entitled "An act to consolidate the acts relative to the auditor and treasurer, and election of attorney general," approved, March 2, 1833, be so amended, that hereafter, the warrants required to be deposited, as in said act required, shall be canceled with a canceling hammer, by striking the same upon the face of each warrant, instead of the canceling required by said act. This act to be in force from and after its passage.

APPROVED: February 18, 1845.

ACT, NUMBER II.

AN ACT FOR THE FURTHER RESTRICTION OF IMPRISONMENT FOR DEBT.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That when any defendant in execution, shall be held in custody on final process, in a case where the said defendant can not be discharged under the provisions of an act entitled "An act for the relief of insolvent debtors," approved, January the twelfth, in the year of our Lord one thousand eight hundred and twenty-nine, and when said defendant shall make an affidavit before some competent officer authorized to administer oaths, that he or she has no rights or credits, property, real and personal, in possession or action, except such property as is exempt from execution by the laws of this State, it shall not be lawful for the said defendant to be committed to the common jail of any county in this State, unless the plaintiff in execution, his or her agent or attorney shall, on Monday of each and every week, pay to the jailer, the fees to which he may be entitled on said imprisonment: Provided, That no defendant in execution shall be discharged as aforesaid, unless the plaintiff in execution, his or her agent or attorney, if a resident of the county where the proceedings are had, shall have had at least three days' notice of the time and place of the making of such affidavit.*

SEC. 2. If, at any time, the plaintiff, his agent or attorney shall fail to advance the jail fees, as herein provided, it shall be the duty of the officer or jailer, as the case may be, forthwith to discharge the prisoner; and it shall not be lawful to arrest or imprison the said defendant a second time, upon an execution issued upon the same judgment; but nothing herein contained, shall operate to discharge the said defendant from the payment of such judgment and costs, if property can be found to satisfy the same.

SEC. 3. If the plaintiff, his agent or attorney, shall make the advances of the jail fees, as herein provided, the said defendant may be imprisoned, at one dollar and fifty cents per day, until the judgment and costs shall be satisfied; and the officer making the arrest, shall, in that event, indorse the execution "satisfied in full by imprisonment."

SEC. 4. This act to be in force from and after its passage.

APPROVED: February 28, 1845.

[AMENDATORY to Chapters 14 and 52.]

ACT, NUMBER III.

AN ACT TO FIX THE TENURE OF THE OFFICE OF MASTER IN CHANCERY.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That from and after the first day of April next, the tenure of office of master in chancery, in the several counties in this State, shall be two years.

SEC. 2. Whenever a vacancy occurs in the office of master in chancery, in any county in this State, under the provisions of this law, it shall be the duty of the judge presiding in the circuit court of such county, to fill such vacancy by appointment, as soon thereafter as conveniently may be.

SEC. 3. So much of the first section of the law entitled "An act to fix the tenure of certain officers," approved, February 21st, one thousand eight hundred and forty-three, as conflicts with the provisions of this law, be, and the same is hereby repealed.

APPROVED: March 3, 1845.

[AMENDATORY to Chapter 21.]

ACT, NUMBER IV.

AN ACT IN RELATION TO MASTERS IN CHANCERY.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever any master in chancery shall have resigned his office, or shall have been removed therefrom, and shall have left any business pertaining to his office, unfinished, it shall be lawful for his successor or successors in office, to do any act or acts coming within the duties of the master, which may have been left undone by his predecessor or predecessors, and which may be necessary to the final completion of such unfinished business.

SEC. 2. That this act shall have relation to any business as aforesaid, which may, now or hereafter, remain unfinished, as contemplated in the first section of this act; and that this act shall take effect from and after its passage.

APPROVED: February 10, 1845.

[AMENDATORY to Chapter 21.]

ACT, NUMBER V.

AN ACT AUTHORIZING MASTERS IN CHANCERY TO GRANT WRITS OF CERTIORARI.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That hereafter, masters in chancery in their respective counties, upon application in manner as now is provided by law, to be made to the proper judge, shall have power to grant and order the issuing of writs of *certiorari*, to remove causes from before justices of the peace and probate justices, into the circuit court.

APPROVED: March 3, 1845.

[AMENDATORY to Chapter 21.]

ACT, NUMBER VI.

AN ACT TO EXEMPT BURYING GROUNDS FROM TAXES, EXECUTIONS AND ATTACHMENTS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That wherever any lot of ground, not exceeding ten acres, shall be appropriated and used as a burying ground, and shall be recorded as such in the recorder's office of the county, the same shall be exempt from all taxes.

SEC. 2. Where any such lot of ground shall be laid off and sold in lots for burying the dead, the said lots shall not be subject to execution or attachment: *Provided,* That no person shall hold more than one-eighth of an acre exempt from execution.

APPROVED: March 3, 1845.

[AMENDATORY to Chapter 22.]

ACT, NUMBER VII.

AN ACT IN RELATION TO THE ELECTION OF COUNTY OFFICERS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That from and after the first Monday in August, A. D., 1847, the tenure of office of all justices of the peace, constables, probate justices of the peace, county recorders, county commissioners' clerks, county surveyors and county treasurers, shall continue for two years only, after their election, and until their successors shall be elected and qualified.

SEC. 2. On the first Monday in August, in the year eighteen hundred and forty-seven, and on the first Monday of August, every two years thereafter, there shall be elected in each county in this State, one probate justice of the peace, one county recorder, one county commissioners' clerk, one county surveyor, a county treasurer, and such justices of the peace and constables, as are now by law required to be elected.

SEC. 3. All laws and parts of laws, coming within the meaning and purview of this act, are hereby repealed.

APPROVED: February 27, 1845.

[AMENDATORY to Chapter 27.]

ACT, NUMBER VIII.

AN ACT AUTHORIZING COUNTY COMMISSIONERS' COURTS TO PROVIDE FOR THE SAFE KEEPING AND PRESERVING ALL THE PUBLIC RECORDS BELONGING TO SAID COUNTIES.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the respective county commissioners' courts of this State be, and they are hereby authorized to erect, build and provide permanent fire-proof rooms, houses or vaults, for the purpose of placing therein and preserving from injury, damage, loss or destruction by fire, the records and documents of their respective counties.

APPROVED: March 3, 1845.

[AMENDATORY to Chapter 27.]

ACT, NUMBER IX.

AN ACT TO ENCOURAGE THE APPREHENSION OF HORSE THIEVES.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be lawful for the county commissioners' courts of the several counties in this State, by an order to be entered upon their records, to fix upon a sum, not exceeding fifty dollars, as a reward to be paid to any person or persons who shall hereafter pursue and apprehend, beyond the limits of the county where the offence shall have been committed, any person guilty of stealing any horse, mare or mule; which reward shall be paid, on conviction of the thief, by the county in which the offence was committed: *Provided,* That said reward shall not disqualify the person entitled thereto from being a witness.

APPROVED: February 26, 1845.

[AMENDATORY to Chapter 27.]

ACT, NUMBER X.

AN ACT TO ESTABLISH THE COOK COUNTY COURT.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That there shall be, and hereby is created and established, a county court, in and for the county of Cook, in the State of Illinois, which court shall be called the "Cook county court," and shall be a court of record, with a seal and clerk, and be held by a judge to be chosen in the manner, and hold his office for the term prescribed in the Constitution of this State, for the appointment of judges of courts of record: Said judge shall, before he enters upon the duties of said office, take the usual oath of office.

SEC. 2. The said court shall have jurisdiction concurrent with the circuit courts of this State, in all matters civil and criminal, and in all suits and proceedings, either at law or in equity, within the limits of said county, and shall have exclusive jurisdiction in all appealed cases arising within the same, and in all cases of misdemeanor, which are prosecuted by indictment.

SEC. 3. The process of said court shall be tested in the name of the judge thereof, and be issued and executed in the same manner as process from the circuit court of said county; and the rules, proceedings and practice not herein otherwise

provided for, shall conform, as near as may be, to the rules, proceedings and practice of the circuit courts of the State; and all orders, judgments and decrees of said court, shall have the same lien upon real and personal estate, and shall be enforced and collected in the same manner as orders, judgments and decrees, rendered in the circuit courts of this State; and appeals from the orders, judgments and decrees of said county court, directly to the supreme court, shall be had in the same cases, and taken and conducted in the same manner as is provided by the laws of this State, for the taking of appeals and writs of error from the circuit court: *Provided*, That the judge of the said court shall have full power to establish all such rules of practice, at law or in equity, as he may think necessary to expedite the business of said court; which rules of practice shall be binding and obligatory upon the parties to suits in said court, from the time they shall be entered of record.

SEC. 4. The judge of said court shall hold four terms of said court in each year, in a building to be provided by the county commissioners' court of said county, in the city of Chicago, commencing on the first Mondays of May, August, November and February, and shall continue each term until all the business before the same is disposed of. The said judge shall have power to appoint special terms of said court at such times as he may think proper, upon giving twenty days' notice thereof in the corporation newspaper of the city of Chicago; which notice shall be given by the clerk of said court, under the order of the judge of the said court; and the judge of the said court shall have the same powers in vacation as are now vested in the judges of the supreme court when acting as circuit judges in vacation; and shall have power, upon entering the proper order of record in said court, during any term thereof, to fix any number of days or times at which he will hear at his chambers, general and special motions, arguments of demurrers, and arguments upon agreed cases, and for the making up of issues, and for the making of orders thereupon, and for the making of all such interlocutory orders as may be necessary to expedite the proceedings in any cause; and the said court shall always be considered open for hearing all matters and applications on the chancery side thereof, and the granting of all such orders as may be required or necessary in the practice of said court: *Provided*, That no final order, judgment or decree shall be entered in vacation, except judgments by confession, which may be entered at any time, upon filing the proper papers with the clerk of said court, and have the same force and effect as if entered in term time: *And, provided further*, That the judge of said court shall examine and sign the records of the general and special terms of said court, as also, all orders entered on motion days, which orders shall have the same force and effect, and the judge shall have the same power to enforce the same, as if entered in term time.

SEC. 5. That all recognizances taken before any justice of the peace within said county, in any criminal proceedings, shall be taken returnable to said court; and said justice shall return all the papers in criminal cases to the said court, in the same manner as now required by law, to the circuit courts; and all fines, penalties and forfeitures, had or taken in any criminal proceeding whatsoever, shall enure to the benefit of said county.

SEC. 6. The clerk of said court shall be appointed by the judge thereof, and shall, before entering upon the duties of said office, make and file with the clerk of the county commissioners' court, his bond with good and sufficient securities, to be approved of by the judge of said court, to the people of the State of Illinois, in the

penal sum of five thousand dollars, conditioned, well, truly and faithfully to perform the duties of his said office, and to pay over and account for all such sums of money as may come into his hands by virtue of his said office, and a new bond with further, other or additional securities given whenever the judge of said court shall direct.

SEC. 7. The grand and petit jurors of said court, shall be selected by the county commissioners' court of Cook county, in the manner provided by law for the selection of jurors for the circuit court, and shall possess the same qualifications, be liable to the same penalties and punishments, have the benefit of the same excuses and exemptions, shall take the same oaths, and possess the same powers, and be governed in all their proceedings in the same manner as is prescribed, allowed and imposed in the case of jurors in the circuit court.

SEC. 8. The sheriff shall perform the same duties, and have the same powers, and be liable to the same penalties in the said court as he may perform, has or may be subject to, in the circuit court; and there shall be elected by the legislature, a prosecuting attorney for said county, who shall hold his office for the term of two years, and until a successor is appointed and qualified.

SEC. 9. The clerk, jurors, sheriff and other officers of said court, shall receive the several fees and compensation that now are, or hereafter may be allowed for similar services, in the circuit courts of this State, to be received, collected and paid in like manner, as such fees now are, or hereafter shall be; and the judge of said court shall receive a salary of six hundred dollars, and the prosecuting attorney two hundred dollars to be paid quarterly out of the State treasury.

SEC. 10. This act to take effect from and after its passage.

APPROVED: February 21, 1845.

[AMENDATORY to Chapter 29.]

ACT, NUMBER XI.

AN ACT TO ESTABLISH THE JO DAVIESS COUNTY COURT.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That there shall be, and hereby is created and established, a county court in and for the county of Jo Daviess, in the State of Illinois, which court shall be called the "Jo Daviess county court," and shall be a court of record, with a seal and clerk, and be held by a judge to be chosen in the manner, and hold his office for the term prescribed in the Constitution of this State, for the appointment of the judges of courts of record. Said judge, before he enters upon the duties of the said office, shall take the usual oath of office.*

SEC. 2. The said court shall have jurisdiction concurrent with the circuit court of this State, in all matters, civil and criminal, and in all suits and proceedings, either at law or in equity, within the limits of the said county, and shall have exclu-

sive jurisdiction in all appeal cases arising within the same, and in all cases of misdemeanor prosecuted by indictment.

SEC. 3. The process of said court shall be tested in the name of the judge thereof, and be issued and executed in the same manner as process from the circuit court of the said county, and the rules, proceedings and practice, not herein otherwise provided for, shall conform as near as may be, to the rules, proceedings and practice of the circuit courts of the State; and all orders and judgments, and decrees of said court, shall have the same lien upon real and personal estate, and shall be enforced and collected in the same manner as orders, judgments and decrees, rendered in the circuit courts of this State; and appeals from the orders, judgments and decrees of the said county court, directly to the supreme court, shall be had in the same cases, and taken and conducted in the same manner, as is provided by the laws of this State, for the taking of appeals and writs of error from the circuit court: *Provided*, That the judge of the said court shall have full power to establish all such rules of practice at law or in equity, as he may think necessary to expedite the business of the said court, which rules of practice shall be binding and obligatory upon the parties to suits in said court, from the time they shall be entered of record.

SEC. 4. The judge of the said court shall hold four terms of said court in each year, in a building to be provided by the county commissioners' court, in the said county, in the city of Galena, commencing on the first Mondays of May, August, November and February, and shall continue such term until all the business before the same is disposed of. The said judge shall have power to appoint special terms of the said court, at such times as he may think proper, upon giving twenty days' notice thereof in some newspaper printed in the city of Galena, which notice shall be given by the clerk of the said court, under the order of the judge of the said court; and the judge of the said court shall have the same powers in vacation as are now vested in the judges of the supreme court, when acting as circuit judges in vacation; and shall have power upon entering the proper order of record in said court, during any term thereof, to fix any number of days or times at which he will hear at his chambers, general and special motions, arguments of demurrers, and arguments upon agreed cases, and for the making up of issues, and for the making of orders thereupon, and for the making of all such interlocutory orders as may be necessary to expedite the proceedings in any cause; and the said court shall always be considered open for hearing all matters and applications on the chancery side thereof, and the granting of all such orders as may be required or necessary in the practice of the said court: *Provided*, That no final order, judgment or decree, shall be entered in vacation, except judgment by confession, which may be entered at any time, upon filing the proper papers with the clerk of the said court, and have the same force and effect as if entered in term time: *And, provided further*, That the judge of said court shall examine and sign the records of the general and special terms of the said court, as also all orders entered on motion days, which orders shall have the same force and effect, and the judge shall have the same power to enforce the same, as if entered in term time.

SEC. 5. That all recognizances taken before any justice of the peace within the said county in any criminal proceeding, shall be taken returnable to the said court; and said justice shall return all the papers in criminal cases, to the said court, in the same manner as is now required by law, to the circuit courts; and all fines, pen-

alties and forfeitures, had or taken in any criminal proceedings whatsoever, shall enure to the benefit of the said county.

SEC. 6. The clerk of the said court shall be appointed by the judge thereof, and shall, before entering upon the duties of said office, make and file with the clerk of the county commissioners' court, his bond with good and sufficient securities, to be approved by the judge of the said court, to the people of the State of Illinois, in the penal sum of five thousand dollars, conditioned, well, truly and faithfully to perform the duties of his said office, and to pay over and account for all such sums of money as may come into his hands by virtue of his office, and a new bond, with further, other or additional securities, given whenever the judge of the said court shall direct.

SEC. 7. The grand and petit jurors of said court shall be selected by the county commissioners' court of Jo Daviess county, in the manner provided by law for the selection of jurors for the circuit court, and shall possess the same qualifications, be liable for the same penalties and punishments, and have the benefit of the same excuses and exemptions, and shall take the same oaths, and possess the same powers, and be governed by all their proceedings in the same manner as is prescribed, allowed and imposed, in the case of jurors in the circuit court.

SEC. 8. The sheriff shall perform the same duties, and have the same powers, and be liable to the same penalties in the said court, as he may perform, has or may be subject to, in the circuit court; and there shall be elected by the legislature, a prosecuting attorney for said county, who shall hold his office for the term of two years, and until a successor is appointed and qualified.

SEC. 9. The clerks, jurors, sheriff and other officers of said court, shall receive the several fees and compensation that now are, or hereafter may be allowed for similar services in the circuit courts of this State, to be received, collected and paid in the same manner as such fees now are, or hereafter shall be. And the judge of the said court shall receive a salary of five hundred dollars, and the prosecuting attorney one hundred dollars, to be paid quarterly out of the State treasury.

SEC. 10. That the judge of the Cook county court is hereby required to hold two terms of the Jo Daviess county court, annually, as follows, viz: On the first Mondays in July and October, and until otherwise provided for by law; and is hereby vested with full jurisdiction as is given to the judge of the Jo Daviess court herein provided, for which said services, he shall be entitled to the compensation of two hundred and fifty dollars per annum, to be paid out of the State treasury, any part of this act, or any law to the contrary notwithstanding.

APPROVED: March 1, 1845.

ACT, NUMBER XII.

AN ACT RELATIVE TO CRIMINAL JURISPRUDENCE.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That from and after the passage of this act, where any person or persons have been or shall be bound by recognizance to keep the peace, or for their good behavior, and for appearance of the party in the circuit court, if the prosecutor shall fail to appear and prosecute, or if, upon the hearing, it shall appear that the prosecution was commenced maliciously, without reasonable or probable cause, the court may, in its discretion, give judgment against the prosecutor for the costs of prosecution and defence.

APPROVED: February 21, 1845.

[AMENDATORY to Chapter 29.]

ACT, NUMBER XIII.

AN ACT TO AMEND AN ACT, ENTITLED "AN ACT TO PREVENT THE UNLAWFUL DRIVING AWAY OF CATTLE AND OTHER STOCK, BY DROVERS AND OTHER PERSONS;" APPROVED, FEBRUARY 3, 1841.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever any drovers, or other person or persons, engaged in herding or driving any horses, cattle, sheep, mules or hogs, in any part of this State, shall permit any of the before named stock to remain with his or their drove, for a longer period than two days and nights, at any one time, shall be subject to the same penalties which are imposed in the first section of the act to which this is an amendment: *Provided,* That the penalties in relation to herding shall not apply, except in cases where the same are confined within inclosures.

SEC. 2. This act to take effect from and after its passage.

APPROVED: February 27, 1845.

[AMENDATORY to Chapter 35.]

ACT, NUMBER XIV.

AN ACT TO AUTHORIZE THE APPOINTMENT OF COMMISSIONERS IN OTHER STATES.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the Governor of this State may appoint and commission, in any other State or territory of the United States, one or more commissioners, to continue in office during the pleasure of the Governor, who shall have power to administer oaths and to take depositions, and the proof and acknowledgment of deeds, or other instruments to be used or recorded in this State.

SEC. 2. Before any such commissioner shall proceed to discharge any of the duties of his said appointment, he shall take and subscribe an oath, before some justice of the peace, or officer authorized to administer oaths in the State for which he is appointed, that he will faithfully discharge the duties of his said appointment; which oath shall be filed in the office of the secretary of State of this State.

APPROVED: March 1, 1845.

[AMENDATORY to Chapter 40.]

ACT, NUMBER XV.

AN ACT TO AMEND AN ACT, ENTITLED "AN ACT REGULATING THE MODE OF TAKING DEPOSITIONS, AND TO PROVIDE FOR THE PERPETUATING OF TESTIMONY;" APPROVED, FEBRUARY 9, 1827.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever the deposition of any witness or witnesses is desired to be read in evidence, in any civil cause depending in any court of this State, whether in law or equity, in accordance with the provisions of the act to which this is an amendment, when neither the adverse party in such cause nor his attorney resides within the limits of this State, after affidavit of such non-residence being filed in the clerk's office of the court of the county in which such cause is pending. The notices provided for in the several sections of said act may be given as follows:—Firstly, by posting said notices at the door of the court-house of the county where said suit is pending, and filing interrogatories when required by said act, in the office of the clerk of said court, at least four weeks prior to the time of suing out a commission or taking such depositions, as the case may be: or, Secondly, by publishing said notice in the nearest newspaper, for four weeks succes-

sively, prior to suing out a commission or taking depositions, as the case may be, and filing interrogatories when required, as hereinbefore provided.

SEC. 2. That this act shall take effect and be in force from and after its passage.

APPROVED: March 1, 1845.

[AMENDATORY to Chapter 40.]

ACT, NUMBER XVI.

AN ACT TO REGULATE PRACTICE IN THE SUPREME AND CIRCUIT COURTS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the clerks of the supreme and circuit courts shall, in no case, make a complete record, unless directed to do so by the court or one of the parties: *Provided,* That the party desiring such record shall pay for the same. All laws or parts of laws, coming within the purview of this act, are hereby repealed.

APPROVED: February 21, 1845.

[AMENDATORY to Chapter 41.]

ACT, NUMBER XVII.

AN ACT TO AUTHORIZE JUSTICES OF THE PEACE TO TAKE RECOGNIZANCES IN CERTAIN CASES.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any justice of the peace before whom any person is brought, on a complaint for any crime, misdemeanor or other offence, bailable by the laws of this State, may take the recognizance of such persons with surety or sureties, in a reasonable sum, for his appearance before said justice, for further examination, at a future time, not exceeding ten days; at which time and place, all subpoenas in the case shall be made returnable.

SEC. 2. That if the person thus recognized, shall not appear before said justice, at the time appointed for further examination, as set forth in the recognizance, it shall be the duty of said justice to note his default upon the record, and certify the same recognizance with the record of the default in the performance of the condition thereof, to the circuit court of his county, that a *scire facias* may issue thereon, or an action of debt be brought for the recovery of the penalty.

APPROVED: March 3, 1845.

[AMENDATORY to Chapter 59.]

ACT, NUMBER XVIII.

AN ACT TO EXTEND THE JURISDICTION OF JUSTICES OF THE PEACE AND CONSTABLES IN ACTIONS OF FORCIBLE ENTRY AND DETAINER, OR FORCIBLE DETAINER ONLY.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all actions of forcibly entry and detainer, or forcible detainer only, hereafter to be brought in this State, it shall be lawful for constables in the respective counties where such shall be brought, to serve all process therein, and who shall be entitled to the same fees and emoluments therefor as sheriffs are now authorized by law to receive for similar services.

SEC. 2. That when any such action shall be hereafter brought, the justice of the peace before whom such suit shall be commenced, shall direct all process to be issued therein to the sheriff or any constable of his county to execute; and when such process shall be issued and directed, it shall be at the option of the plaintiff and defendant to give their respective process to the sheriff of the county, or to any constable of the justice's district, to execute and return the same, any law now in force in this State to the contrary notwithstanding.

SEC. 3. This act to take effect from and after the first of April next.

APPROVED: February 25, 1845.

[AMENDATORY to Chapter 43 and 59.]

ACT, NUMBER XIX.

AN ACT TO LEASE THE PENITENTIARY.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the penitentiary of the State of Illinois, located at Alton, in the county of Madison, in said State, and the labor of the convicts now or hereafter to be confined therein, shall be and the same is hereby leased and granted to Samuel A. Buckmaster, upon the following terms and conditions, to-wit: *First:* The said lease herein authorized and granted, shall take effect and the term thereof commence from and after the tenth day of June, A. D., one thousand eight hundred and forty-five, and shall continue to the said S. A. Buckmaster, his executors, administrators and assigns, for a period of eight years, from the commencement of the same, and

until the tenth day of June, A. D., eighteen hundred and fifty-three, unless sooner avoided, for reasons specified in this act.

Second: The said lessee shall pay, annually, into the treasury of the State, a bonus of five thousand and one hundred dollars, which said bonus shall be paid in gold, silver, auditor's warrants, or in other State indebtedness, at its current value at the time of paying the same; the first payment of five thousand and one hundred dollars to be made on the tenth day of June, A. D., eighteen hundred and forty-six; and a like sum of five thousand and one hundred dollars, per annum, on the tenth day of June, of every year thereafter, during the continuance of said lease, and until the entire rent herein stipulated for and reserved shall have been paid: *Provided*, That the said bonus accruing for the last year of said term shall be paid in advance.

Third: The said lessee within one year from the commencement of the term herein granted and authorized, shall apply the labor of one-fourth of the convicts confined in said penitentiary, to the manufacture of hempen articles; and within two years from the commencement of the said term, the said lessee shall divert and apply the labor of a majority of the said convicts to the said manufacture of hempen articles; and during the remainder of the said term, the labor of a major part of the convicts who may be from time to time confined in the said penitentiary, shall be applied entirely and exclusively to the manufacture of hempen articles, and to no other employment or purpose whatever.

Fourth: The said lessee, in addition to the bonus hereinbefore prescribed, shall pay the usual fees of the inspectors, shall furnish, at his own expense, the necessary guards, shall feed and clothe the convicts, and furnish all necessary beds and bedding for the cells, and all necessary bills of physicians, and shall save the State harmless from all expense by reason of any of the items specified in this article.

Fifth: The said lessee shall enter into bond, conditioned to abide by and comply with all the provisions of this act, so far as shall apply to the duties to be performed by the said lessee; which bond shall be made to the people of the State of Illinois, in the penal sum of twenty thousand dollars, with Washington Libby, Robert Ferguson, Lansing T. Wells, Lewis J. Clanson, B. C. Webster & Co., James L. Lamb, Wm. Tyler Brown, or such of them as shall be approved and deemed sufficient by the Governor, as his securities; which said bond shall be executed within ten days after the passage of this act, and shall be filed with the secretary of State, and shall be renewable every two years, or oftener, if, in the opinion of the inspectors, the securities become insufficient to secure the interests of the State, with such securities as the Governor for the time being shall approve.

Sixth: The said lessee, his executors, administrators or assigns, shall be bound by all the provisions of this act; and if at any time for a period of thirty days after the same shall become due and payable, the yearly bonus, as herein provided, shall remain unpaid, or the said lessee shall fail to comply with any of its substantial provisions, the lease hereby granted shall therefor become forfeited: *Provided*, That the said lessee and his securities shall not be released from the amount of any bonus due at the time that the said penitentiary shall be resumed by the State, by reason of said forfeiture, nor from any loss that may accrue to the State by reason of a less bonus being obtained upon a re-letting of the same.

Seventh: The said S. A. Buckmaster, by virtue of this act, shall be warden of the said penitentiary, and shall take an oath, possess all the right, and perform all the duties of warden of the said penitentiary, as is now provided by law; and all laws not coming within the purview of this act, respecting the power of the inspectors and

the police and management of the said penitentiary, and such other laws, not inconsistent with the terms of this act, as the legislature may, from time to time, prescribe for the welfare and reformation of the said convicts, shall be in force and binding upon the said warden and lessee.

Eighth: If the said lessee shall be called upon by the State, during the term of the said lease, to construct a warden's house, the said lessee shall be and hereby is bound to construct the same complete, according to the original plan, for the sum of three thousand dollars, to be deducted from the said sum of five thousand one hundred dollars, accruing for the year when such warden's house shall be built.

Ninth: All laws coming within the purview of this act, and all laws that authorize the inspectors of the penitentiary to lease the same and appropriate the proceeds of said lease to any purpose, are hereby repealed. This act shall be in force from and after its passage.

APPROVED : March 1, 1845.

[AMENDATORY to Chapter 81.]

ACT, NUMBER XX.

AN ACT TO REGULATE THE SALARIES OF JUSTICES OF THE SUPREME COURT HEREAFTER TO BE ELECTED.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the annual salary of each and every of the justices of the supreme court of this State, who shall be elected or appointed after the passage of this act, shall be one thousand dollars, and no more, any law of this State to the contrary notwithstanding.

SEC. 2. All laws or parts of laws, inconsistent with this act, are hereby repealed. This act to take effect and be in force from and after its passage.

APPROVED, February 12, 1845.

[AMENDATORY to Chapter 29 and 83.]

ACT, NUMBER XXI

AN ACT TO PROMOTE A MORE FAITHFUL DISCHARGE OF THE DUTIES OF PROBATE JUSTICES OF THE PEACE AND FOR OTHER PURPOSES.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be the duty of each and every probate justice of the peace in this State, to enter in the proper books of his office, a full and perfect record of all orders, judgments or decrees, which shall be hereafter made by such officer in the due course of his proceedings, when acting as, and discharging the duties of probate justice of the peace.

SEC. 2. If any such probate justice of the peace shall wilfully fail, neglect or refuse to make, or cause to be made a full and perfect record of all such orders, decrees or judgments made as aforesaid, within ten days from the time of making the same, he shall be held, and taken to be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum, not less than five, nor more than one hundred dollars.

SEC. 3. This act, and also chapter 54 of the revised statutes, entitled "Interest," passed at the present session, shall take effect, and be in force from and after the first day of May, eighteen hundred and forty-five, any law to the contrary notwithstanding.

SEC. 4. Section eighty of the act entitled "An act regulating the assessment and collection of the public revenue," passed at the present session be, and the same is hereby repealed.

SEC. 5. The council of revision shall, on the approval of the revised statutes, deliver the same to the superintendent, appointed in chapter ninety of the revised statutes, who shall copy and certify the same, and with the same effect, as the secretary of State is authorized to do, in said chapter. After the same are copied and compared for publication, the enrolled chapters shall be then filed in the office of the secretary of State. The sum of two hundred dollars is hereby appropriated to said superintendent for copying the same for publication. The act to establish and maintain common schools, shall take effect and be in force from and after its passage.

APPROVED, March 3, 1845.

[AMENDATORY to Chapter 54, 85, 89, 90 and 98.]

ACT, NUMBER XXII.

AN ACT TO AMEND "AN ACT TO PROVIDE FOR THE ELECTION OF PROBATE JUSTICES OF THE PEACE."

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all the entries which have been made, and which shall hereafter be made, and all proceedings which have been had, or which may hereafter be had, by probate justices of the peace, in the several counties of this State, in taking and entering proof of wills and codicils, and recording the same, granting letters testamentary and letters of administration, and recording the same, taking bonds in all such cases, and recording the same, receiving and recording inventories and sale bills, and all other entries and proceedings of such probate justices of the peace of and concerning the settlement of estates of any deceased person, and the entries and proceedings which have been, or which may hereafter be made or had, touching the duties of said probate justices, under the laws in reference to minors, orphans and guardians, are hereby declared matters of record; and all the entries of proceedings which may have been, or shall hereafter be made, by the said probate justices of the peace, or copies thereof, duly certified by them, or either of them, under the hand and seal of the said probate justice of the proper county, shall be good evidence, where such evidence may be required, of such entries and proceedings, in all the courts of law and chancery in this State, any law to the contrary notwithstanding.

SEC. 2. And so much of the act entitled "An act to provide for the election of probate justices of the peace," as requires transcripts of proceedings before probate justices, to be filed in the clerk's office of the circuit court, in order to be used as evidence in any other State or territory, and so much as requires probate justices to report their proceedings to the circuit courts of their respective counties, for the approval or rejection of such circuit courts, is hereby repealed.

SEC. 3. That in all cases where probate justices have failed to make such report, it shall not be required; but their record, or certified copies of the same, shall be good evidence, as though the same had been reported to the circuit courts of their respective counties, and approved by said courts.

SEC. 4. That all rights acquired, or liabilities incurred, before this act takes effect, are not to be affected by the passage of this act.

SEC. 5. This act to take effect and be in force from its passage.

APPROVED: March 1, 1845.

ACT, NUMBER XXIII.

AN ACT CONCERNING PUBLIC RECORDS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the commissioner appointed, or to be appointed by the county commissioners' court of any county in the military bounty tract, in this State, under an act approved February 12th, A. D., 1835, and an act approved February 27th, A. D., 1841, concerning the transcribing of certain records, is hereby authorized and required carefully to compare the transcript record with the records so transcribed; and if he find them to be correctly copied, he shall make a certificate to that effect, under his hand and official seal of office, as such commissioner, at the end of each volume of such copies, in lieu of the recorder of the county, having charge of said records.

SEC. 2. So much of said recited acts as conflicts with the provisions of this act, is hereby repealed. This act to be in force from and after its passage.

APPROVED: March 1, 1845.

[AMENDATORY to Chapter 87.]

ACT, NUMBER XXIV.

AN ACT TO AUTHORIZE RECORDERS TO APPOINT DEPUTIES.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That section second of the act entitled "An act legalizing certain records in Greene county, and authorizing recorders to appoint deputies in certain cases," in force, January 24th, 1843, be, and the same is hereby repealed.

SEC. 2. That the recorder in each county be, and he is hereby authorized to appoint a deputy, who shall be sworn to discharge his duty faithfully, in the same manner as the recorder is now sworn, and the acts of said deputy in recording any writings authorized by law to be recorded, shall be deemed valid in all respects, as if recorded by the recorder himself. The recorder shall, at the time of the appointment of said deputy, enter upon the records of his office the certificate of the appointment aforesaid.

SEC. 3. Hereafter, the penalty of each recorder's bond, shall be in the sum of not less than two, nor more than five thousand dollars, to be determined by the county commissioners' court, taking the bond.

APPROVED: February 26, 1845.

[AMENDATORY to Chapter 87.]

ACT, NUMBER XXV.

AN ACT CONCERNING THE REVENUE.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the thirty-second section of an act, approved, March sixth, one thousand eight hundred and forty-three, entitled "An act to amend an act entitled an act concerning the public revenue," approved, February 26, 1839; and "An act supplemental to said act," approved, March first, 1839, be, and the same are hereby repealed; and hereafter, all lands lying within the corporate limits of any town or city, shall be subject to taxation, under the ordinance of said towns and cities respectively, whether the same be laid out into town lots and the plats thereof recorded, or not, any thing in the above recited section to the contrary notwithstanding.

SEC. 2. This act shall be in force from the time of its passage.

APPROVED: February 11, 1845.

[AMENDATORY to Chapter 89.]

ACT, NUMBER XXVI.

AN ACT TO ENABLE FORMER AND LATE COLLECTORS OF THE REVENUE IN THE SEVERAL COUNTIES OF THIS STATE TO COLLECT ANY TAXES REMAINING DUE AND UNPAID.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all former or late collectors of the revenue in the several counties of this State, who shall have failed to close their collections in accordance with the provisions of the several statutes in such case made and provided, whether said revenue shall have been advanced and paid over to the county and State, or not, are hereby authorized and empowered, at any time within five years from and after the time provided by law for making final settlement, to collect all taxes and assessments remaining due and unpaid on any lands, town lots or personal property in their several counties.

SEC. 2. The said collectors, in order to collect said taxes and assessments, are hereby empowered to do whatsoever they might lawfully have done to enforce the payment of the same, had the ordinary time for making such collections not transpired; and may sell at any regular time for selling lands for taxes in and for their several counties, all lands and town lots, on which taxes remain due and unpaid, and all rights accruing under such sales are hereby protected, and may be per-

fects as under ordinary sales for taxes: *Provided*, Public notice of the time and place of sale shall be given, and proceedings conducted, in all respects as is now, or may hereafter be required by law, in ordinary sales of lands for taxes.

SEC. 3. That no late or former collector, who has advanced the State or county taxes upon any real estate, shall be authorized to sell such real estate to re-imburse such taxes to himself, in any case where such real estate has changed owners since the expiration of the period in which such taxes should have been collected: *Provided*, That this act shall not be so construed, as to extend the time provided by law for collectors making final settlement, or to release them or their securities, from any penalties or liabilities incurred.

SEC. 4. This act to take effect and be in force from and after its passage.

APPROVED: February 10, 1845.

[AMENDATORY to Chapter 89.]

ACT, NUMBER XXVII.

AN ACT TO SAVE A PORTION OF THE REVENUE FROM BEING LOST.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That after the first day of January, in each and every year, it shall be the duty of the auditor of public accounts, when any person applies to redeem a tract or lot of land which had been previously sold to the State for taxes, to charge said person, in connection with former assessments, the same amount of tax for the year in which the same is redeemed, as was assessed against the said tract or lot the preceding year; and no tract or lot of land, which has been sold to the State for taxes, or which may be hereafter sold, shall be considered as redeemed from the State, unless the tax for the year in which the same is redeemed, has been paid, as well as all former taxes from the time of sale, to the State.

SEC. 2. The auditor of public accounts shall, on the passage of this act, or as soon thereafter as convenient, make out and transmit to the clerk of the county commissioners' court of each county in which lands may be situated, that have been redeemed since the first day of January, 1845, a list of all such lands so redeemed; whereupon, it shall be the duty of said clerks to make out a certified list of said lands, so returned, and hand the same to the assessors of their counties, whose duty it shall be to value the said lands, within fifteen days from the receipt of said list, and return the same to the clerk from whom he received the same. The clerk shall then deliver the said list to the collector of his county, who shall give his receipt for the same, and be accountable, upon his official bond, for the amount due upon said list, and collect the same as other taxes are.

APPROVED: March 1, 1845.

[AMENDATORY to Chapter 89.]

ACT, NUMBER XXVIII.

AN ACT TO AMEND THE SEVERAL LAWS ALLOWING ILLINOIS AND MICHIGAN CANAL LANDS TO BE TAXED AND SOLD FOR TAXES.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the assessment, either for State, county, city or town purposes, upon all lands and town lots belonging to the Illinois and Michigan canal fund, but which have been sold upon a credit, shall be made upon the basis of the valuation of the property, as in other cases; but the lien for said tax shall extend only to the actual interest which has been paid for by the purchaser or purchasers, together with the improvements thereon, and shall not extend to the interest of the State in said lots and lands.

SEC. 2. That if the taxes upon the said property assessed as aforesaid, shall not be paid according to law, and it shall be necessary to sell the same for taxes, such sales shall extend to the interest paid for as aforesaid and all improvements thereon; the fee-simple title to said property still remaining in the State; such sale shall be deemed to transfer only such interest as the purchaser or person against whom the taxes is assessed, had in the premises and improvements aforesaid, subject, however, to the right of redemption, as in other cases.

SEC. 3. That all sales heretofore made for taxes due and unpaid upon said property, shall be considered within the purview of this act, and all deeds hereafter to be made, by virtue of any such sale, shall convey only the interest of the original purchaser or purchasers, or his assignee or assignees; and shall vest all the right, title and interest of said purchaser or purchasers, or his or their assignee or assignees in the said property as aforesaid, and to all improvements thereon.

SEC. 4. It shall be the duty of all assessors to describe particularly in their assessment rolls, all such canal lands as may be taxed, which have been sold by the State but not paid for, particularly describing the interest upon which the assessment is made; and the officer selling the same for taxes, shall, within twenty days after any such sale, file with the proper officers of the canal board, a particular description of the canal lands so sold, together with the date of said sale.

SEC. 5. The purchaser at any such tax sale, shall have the right to continue the payments agreed by the original purchaser or claimant to be paid to the State, until the expiration of the time limited for the redemption of the same; and until which time, the original purchaser or claimant shall have a right to redeem the same by paying, in addition to the sums now required by law, the further sums, with legal interest thereon, which the purchaser at such tax sales may have paid to the State in fulfilment of the original purchase; and after the expiration of such time of redemption, the said lands and lots, not having been redeemed, the purchaser at such tax sale shall have the right to make full payment, according to the terms of the original purchase, and shall be entitled to a patent for such lands or lots, the same as if he had been the original purchaser.

SEC. 6. In making payments for the purpose of redeeming such lands or lots as aforesaid, all sums of money or scrip advanced by the purchaser at tax sales, in continuation of the payments required of the original purchaser or claimant, shall be made at the canal office in gold or silver.

[AMENDATORY to Chapter 89.]

APPROVED: January 29, 1845.

ACT, NUMBER XXIX.

AN ACT IN RELATION TO THE REVISED STATUTES.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the several chapters composing the Revised Statutes, to be furnished at the present session of the General Assembly, shall be deemed and taken as one act; and no part thereof shall become a law, until such time as shall be designated and provided for in the same; and no part thereof shall become a law or be published, until the whole is finished.

APPROVED: February 26, 1845.

[AMENDATORY to Chapter 90.]

ACT, NUMBER XXX.

AN ACT TO AMEND AN ACT ENTITLED AN ACT CONCERNING PUBLIC ROADS, APPROVED FEBRUARY 20th, 1841.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the county commissioners' courts of the several counties in this State, at their March term, annually, shall fix and cause to be entered upon the records of their courts, a certain number of days, not exceeding two, nor less than one, that each and every able bodied man between the ages of twenty-one and fifty years, shall labor upon some public road within the county, during the year; and it shall be the duty of the clerk of said court to append the number of days fixed as aforesaid, to the notice of each supervisor appointed in said county.

SEC. 2. The county commissioners' court of each and every county, in addition to the work required in the preceding section, may, at their March term, annually, assess a road tax of not more than twenty cents, on each hundred dollars' worth of taxable property, real and personal, or either, in their counties: and a column in the tax book shall designate the amount of such road tax due from each person,

from whom the same is to be collected: *Provided*, That said court, in counties where the same is deemed necessary, may assess such road tax for the year eighteen hundred and forty-five, at their June session.

SEC. 3. The clerk of the commissioners' court, immediately on the return of the assessor's book, shall make out a list of the names of all persons owing road tax, in each road district in the county, with the amount of tax due from each person, ascertaining the road district to which such person properly belongs; which list shall be, by said clerk, handed to the sheriff, and by him delivered to the respective supervisors; and any clerk or sheriff who shall fail or neglect to perform the duties required in this section, within the time given to each, as specified in the fourth section of the act to which this is an amendment, for serving notices on supervisors, shall be liable to the penalties stated in said section.

SEC. 4. The tax list being placed in the hands of the supervisor, he shall notify each person residing in said supervisor's district, of the amount due, and that the same may be discharged in labor on the road, and shall thereupon request payment in money or labor, first notifying such person of the time and place to attend and work the same out at the rate of seventy-five cents per day, bringing with him such tools as may be directed by the supervisor; the labor to be performed by the principal or a substitute equally able, working at least eight hours each day: and if such person shall spend the time in idleness, be turbulent, or disobey the supervisor, he shall be discharged from the road, and the balance due shall be collected with twenty-five per cent. advance: *Provided*, All money collected by supervisors for road purposes, shall be disbursed on some road within their district.

SEC. 5. When any person or persons desire a change or relocation of any State or county road now located, or hereafter may be located, and the whole distance proposed to be changed does not exceed three miles, the petitioners applying for the same shall deposit with the county commissioners' clerk a sum of money sufficient to pay for viewing and surveying said road; and on the return of such report, the clerk shall pay for the same with the money before deposited, whether the report be favorable or unfavorable to the change or relocation.

SEC. 6. In all cases where a petition is presented to the county commissioners' court, praying for a change, alteration, location or vacation of a county road, as provided for in the act to which this is an amendment, if there shall be remonstrances presented against granting the same, it shall be the duty of said court to give due consideration both to the petition and remonstrance, and grant or refuse the prayer of such petitioners, as in their discretion shall be just and proper.

SEC. 7. Supervisors, for each and every day necessarily employed over and above their road tax, due for road purposes, shall be allowed seventy-five cents per day for each and every day necessarily employed to carry out the provisions of this act, or the act to which this is an amendment; said money to be paid out of the county treasury, on settlement, under oath, with the county commissioners' court: *Provided*, No supervisor shall be allowed pay for a day's work, when he works with less than ten hands, unless said supervisor's district does not contain as many.

SEC. 8. Sections fourteen, sixteen, eighteen and nineteen, of an act concerning public roads, approved, February 20, 1841, together with all other parts of said act, as well as of an act to authorize county commissioners' courts to assess taxes for road purposes, approved, March 4, 1843, are hereby repealed. This act to take effect and be in force from and after the first day of June next.

SEC. 9. In all cases where supervisors, under the provisions of this act, fail or refuse to comply with the law in relation to supervisors, suits may be commenced against them before justices of the peace of their counties, who shall have jurisdiction in all cases when the fines or forfeitures do not exceed one hundred dollars.

APPROVED: February 28, 1845.

[AMENDATORY to Chapter 93.]

ACT, NUMBER XXXI.

AN ACT MAKING CERTAIN FORDS A PART OF PUBLIC ROADS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all cases where any public road in this State shall cross any stream of water, by means of a ferry, which stream, for any part of the said year, shall be fordable, that is to say, of not more than two and a half feet in depth of water in the main channel thereof, the said ford, together with the banks of said stream, leading thereto, on either side thereof, and that part of the road leading from the main road to said ford, provided the same be no further than four hundred yards from the said ferry, shall be in all respects a part of the said public road.

SEC. 2. When the said ford shall be not more than two and a half feet in depth of water, it shall be the duty of the overseers of the said road, on either side of the said stream, to keep the said ford, and the roads and banks leading thereto, in good order for carriages to pass the same.

SEC. 3. If any person or persons shall build any dam across such stream, thereby raising the water of such ford (unless the same be built for some useful purpose) or shall place or cause to be placed in such ford, any logs, brush, rock or other obstructions whatever, he, she or they, so offending shall pay a fine of twenty dollars, for every such offence, to be recovered before any justice of the peace, in the county or counties where such ford may be, at the suit of any person who may see cause to sue for the same; and shall, moreover, pay double damages to any person, who shall be injured by such obstruction.

APPROVED: February 26, 1845.

[AMENDATORY to Chapter 93.]

ACT, NUMBER XXXII.

AN ACT TO AUTHORIZE THE SECRETARY OF STATE TO SUBSCRIBE FOR CERTAIN PERIODICAL WORKS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the secretary of State is authorized and required, in behalf of the State of Illinois, to subscribe for Niles' Register, Silliman's Journal, and the North American Review, and purchase the back numbers of said works that are not now in the State Library, and pay for the same out of any moneys not otherwise appropriated.

SEC. 2. It shall be the duty of the secretary of State, to receive and preserve the said works, and have them bound in the same form that the remaining numbers are bound, and place them in the State library, subject to the care of the librarian.

SEC. 3. The secretary of the State is authorized to continue said subscriptions, until otherwise directed by law.

APPROVED: February 21, 1845.

[AMENDATORY to Chapter 96.]

ACT, NUMBER XXXIII.

AN ACT SUPPLEMENTARY TO AN ACT TO ESTABLISH AND MAINTAIN COMMON SCHOOLS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That trustees of schools in townships, shall be exempt from military duty and road labor, during their continuance in office as trustees.

APPROVED: March 1, 1845.

[AMENDATORY to Chapter 98.]

ACT, NUMBER XXXIV.

AN ACT TO FACILITATE THE COLLECTION OF DEBTS BY EXECUTORS AND ADMINISTRATORS,
IN DESPERATE CASES.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That upon suggestion made by an executor or administrator, to the court of probate, that any claim, debt or demand whatever, belonging to the estate in his hands to be administered, and accruing in the lifetime of the decedent represented by such executor or administrator, is desperate on account of the insolvency or doubtful solvency of the person or persons owing the same; or on account of the debtor having availed himself of the late bankrupt law of the United States; or on account of some legal or equitable defence which such person or persons may allege against the same; or for the cause that the smallness of such claim, debt or demand, and the difficulty of finding the debtors, owing to the remoteness of their residence, or such executors or administrator's ignorance of the same, the said court may order such claim, debt or demand, to be compounded or sold, or to be filed in the said court for the benefit of such of the heirs, devisees or creditors of such decedent, as will sue for or recover the same, giving the creditors the preference if they or any of them apply for the same before the final settlement of such estate: *Provided,* That no order for the sale or compounding of any such debts, claims or demands, or any of them, shall be made until four weeks' public notice shall have been given to all whom it may concern, of the time and place, when the said order will be applied for; which notice shall be given by the administrator or executor, in some public newspaper, printed in the county where such application shall be made, if any there be, and if no such newspaper shall be printed in said county, then by posting up such notices in some public places in said county, not less than three, of which one shall be the door of the office of the said probate justice of the peace; which said notices shall be for four weeks as aforesaid, previous to the time of said application: *And, provided further,* That the said executor or administrator, as the case may be, shall report to the said probate justice of the peace, the terms upon which he has settled or disposed of any such claim, debt or demand, for his approval.

SEC. 2. And if such claim be compounded or sold, such executor or administrator shall be chargeable with the avails of such compounding; and if the same be taken by any of the said creditors, heirs or devisees aforesaid, he, she or they may maintain an action for the recovery thereof in the name of such executor or executors or administrators, for his, her or their own use; and upon recovering the same, or any part thereof, he, she or they shall be chargeable therewith, after deducting his claim or distributive share, with reasonable compensation for collecting the same; and upon such suits, the executor or administrator shall not be liable for costs.

APPROVED: March 1, 1845.

ACT, NUMBER XXXV.

AN ACT RESPECTING THE PROBATE OF WILLS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That hereafter, when probate of any will and testament shall have been refused by any probate justice of the peace, and an appeal shall have been taken from the order or decision of the said probate justice refusing to admit the said will to probate, into the circuit court of the proper county, as now provided by law, it shall be competent for the party seeking probate of the said will, to support the same on hearing, in the said circuit court, by any evidence which would be competent, in case probate of said will had been allowed and the same were afterwards contested under the fifth section of "An act relative to wills and testaments, executors and administrators, and the settlement of estates," approved, February 3d, 1829; and the said will, having been so proved, upon said appeal, shall be admitted to probate, liable however, to be subsequently contested, as is now provided in case of wills admitted to probate in the first instance.

SEC. 2. This act shall be in force from and after its passage.

APPROVED: February 25th, 1845.

[AMENDATORY to Chapter 109.]

ACT, NUMBER XXXVI.

AN ACT AUTHORIZING ADMINISTRATORS AND EXECUTORS FROM OTHER STATES, TO PROSECUTE SUITS IN THIS STATE.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That when any person or persons have obtained, or may obtain administration on the estate of any intestate, in any one of the United States, or territory thereof, such person or persons shall be enabled to prosecute suits in any court in this State, in the same manner as if administration had been granted to such person or persons by virtue of the laws of this State: *Provided,* That such person or persons shall produce a copy of the letters of administration, authenticated in the manner which has been prescribed by the laws of Congress of the United States, for authenticating the records or judicial acts in any one State, in order to give them validity in other States, and that such letters of administration had been granted in

pursuance of, and agreeably to the laws of the State or territory, in which such letters of administration were granted: *Provided*, That said administrator, executor or other representative, shall give a bond for costs, as in case of other non-residents.

SEC. 2. When any executor or executors have proved or may prove, the last will and testament of any deceased person, and take on him or themselves, the execution of said will, in any State in the United States, or in any territory thereof, such person or persons shall be enabled to prosecute suits in any court in this State, in the same manner, as if letters testamentary had been granted to him or them, under the provisions of the laws of this State: *Provided*, That such executor or executors shall produce a certified copy of the letters testamentary, under the seal of the court where the same were obtained; and a certificate of the presiding officer of such court, that the clerk's certificate is in due form, and that such letters had been granted in pursuance of, and agreeably to, the laws of the State or territory in which such letters testamentary were granted.

SEC. 3. That nothing in this act contained, shall be so construed, as to apply to cases where administration had been, or may be obtained upon the estate of any intestate, by virtue of, or under the provisions of the laws of this State in relation to administrations, nor where letters testamentary may be, or may have been granted, in accordance thereto: And when, after any suit or suits commenced, or to be commenced by any administrator or administrators, executor or executors, under the provisions of the first and second sections of this act, and pending the same, and before final judgment thereon, administration shall be had, or execution undertaken within this State, under the laws of the same, upon the estate of any decedent, upon suggestion of such fact, entered of record, the said resident administrator or administrators, executor or executors, shall, upon motion, be substituted as parties to said suit or suits; and thereupon, the court shall proceed to hear and determine the same, as if it or they had been originally instituted in the name of the said resident administrator or administrators, executor or executors; and the benefits of said judgment or judgments, shall enure to him or them, and be assets in his or their hands.

SEC. 4. That this act shall take effect and be in force, from and after its passage.

APPROVED: March 3, 1845.

[AMENDATORY to Chapter 109.]

ACT, NUMBER XXXVII.

AN ACT TO AMEND AN ACT RELATIVE TO WILLS AND TESTAMENTS, EXECUTORS AND ADMINISTRATORS, AND THE SETTLEMENT OF ESTATES.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That when any person shall die intestate, leaving a widow, said widow, in addition to the property described in the forty-fourth section of the act to which this is an amendment, shall be allowed to retain, as her sole and separate property, one pair of cards, two spinning-wheels, one weaving-loom and its appen-

dages, one stove and the necessary pipe therefor: *Provided*, The same shall be in use, or put up for ready use, in any house occupied by such widow; also, two heads of sheep for each member of her family under twenty-one years of age, and the fleeces of the said sheep, together with all the yarn and cloth that may be manufactured from the same; which said property shall be set apart to the widow, by the administrator, and shall in no case be subject to the debts of her deceased husband.

SEC. 2. In all cases where the intestate, at his death, shall leave no property of the kind and description mentioned in the first section of this act, the widow shall be entitled to retain other property of equal value, or the value of the same in money; and it shall be the duty of the administrator or judge of probate, to allow the value of the articles specified, to be set apart to the widow of any intestate, either in money or other personal property, at her election, any law to the contrary notwithstanding.

SEC. 3. *Be it further enacted*, That when, at the time of the passage of this act, the property described in the forty-fourth section of the act to which this is an amendment, shall not have been set apart to the widow, it shall be the duty of every and any administrator to set apart to her the same, or the value thereof, together with the property mentioned in the first section of this act, or the value of the same, as by this act directed.

SEC. 4. When the person dying intestate shall, at the time of his death, be a housekeeper, the head of a family, and shall leave no widow, there shall be allowed to the children of the intestate, residing with him (including all males under eighteen years of age, and all females,) at the time of his death, the same amount of property as is allowed to the widow by this act, and the act to which this is an amendment.

SEC. 5. *Be it further enacted*, That where any person shall die, leaving a will, and it shall be suspected by the probate justice, that the estate shall be insufficient for due payment of debts, or only sufficient for that purpose, so that the legacies in said will can not be paid, the property allowed to the widow and family of an intestate shall be, on order of the probate justice, reserved from the payment of debts for one year; and if, at or before the expiration of that time, the widow or family, (as described in the foregoing section,) of the deceased, shall prefer to take the property allowed the widow and family, by this and the act to which this is an amendment, and relinquish the provision made for them by said will, she or they shall have the right to do so, by filing with the probate justice a writing, signifying such choice.

SEC. 6. This act to take effect and be in force from and after its passage.

APPROVED, February 21, 1845.

ACT, NUMBER XXXVIII.

AN ACT TO AMEND "AN ACT AUTHORIZING COUNTIES TO GIVE A BOUNTY ON WOLF SCALPS;" APPROVED, FEBRUARY FIFTEENTH, ONE THOUSAND EIGHT HUNDRED AND FORTY-THREE.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That so much of the first section of "An act authorizing counties to give a bounty on wolf scalps," approved, February fifteenth, one thousand eight hundred and forty-three, as limits the payment of bounties on wolf scalps to the age of the wolf, be, and the same is hereby repealed; and that hereafter, the county commissioners' courts of the several counties in this State, may determine, as now provided by law, what bounties shall be paid for wolf scalps taken from wolves of any age.

SEC. 2. Hereafter, upon the proper oath being made before the clerk of the county commissioners' court, or justice of the peace of the proper county respectively, the said clerk or justice of the peace shall issue their certificates to the persons entitled thereto, which certificate, when issued, shall be received by the collector of the proper county for county taxes.

SEC. 3. It shall be the duty of the several clerks of the county commissioners' courts to keep a true and perfect record of the amount of certificates issued as a premium for wolf scalps, to whom, and at what date, and lay the same before their respective courts at each regular meeting thereof.

SEC. 4. This act shall be in force from and after its passage.

APPROVED: February 25, 1845.

[AMENDATORY to Chapter 110.]

ACT, NUMBER XXXIX.

AN ACT TO PROVIDE FOR PAYING A PORTION OF THE INTEREST ON THE STATE DEBT.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That there shall be levied for the year one thousand eight hundred and forty-five, one mill upon each dollar's valuation of property, transferred from the county to the State tax, so that there shall be assessed and collected for the year one thousand eight hundred and forty-five, three mills on each dollar's valuation of property; and for the year one thousand eight hundred and forty-six,

there shall be assessed and collected, three and one-half mills on each dollar's valuation of property; and that shall be the permanent rate of taxation, until otherwise provided by law: and the county commissioners' courts shall not hereafter assess for county purposes, any higher tax than four mills on the dollar, except in cases where they are or may be specially authorized to do so by law.

SEC. 2. The proceeds of one mill of the tax for the year one thousand eight hundred and forty-five, and one and one-half mills for one thousand eight hundred and forty-six, and forever thereafter, until otherwise provided by law, (together with all surplus money in the treasury, after paying the expenses of the government,) shall be set apart and sacredly held for the payment of the interest on the State debt, and shall be called the "*Interest Fund.*"

SEC. 3. The Governor is hereby directed, out of the proceeds of one mill, and one and a half mills, and surplus money, if any there should be, to make semi-annual payments of interest, commencing on the first day of July, one thousand eight hundred and forty-six, and semi-annually thereafter, on the first days of July and January of each year, *pro rata*, on all the canal bonds, and the internal improvement bonds, except the bonds heretofore hypothecated to McAllister and Stebbins; and the additional tax of one mill for the year one thousand eight hundred and forty-five, and one and one-half mills thereafter shall be collected by the several collectors, and paid into the treasury, in gold and silver; and a separate account thereof shall be kept in the office of the auditor and treasurer; and auditor's warrants shall not be received therefor; and if the treasurer or any other public officer shall appropriate the same, or knowingly suffer the same to be appropriated or drawn from the treasury for any other purpose than that provided by this act, he or they shall be deemed guilty of embezzlement, and shall be indicted and punished accordingly; and on conviction shall be removed from office.

APPROVED, March 1, 1845.

ACT, NUMBER XL.

AN ACT SUPPLEMENTAL TO "AN ACT TO PROVIDE FOR THE COMPLETION OF THE ILLINOIS AND MICHIGAN CANAL, AND FOR THE PAYMENT OF THE CANAL DEBT;" APPROVED, FEBRUARY TWENTY-FIRST, ONE THOUSAND EIGHT HUNDRED AND FORTY-THREE.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That after the contract for the loan of one million six hundred thousand dollars, as contemplated in the act, entitled "An act to provide for the completion of the Illinois and Michigan canal, and for the payment of the canal debt," approved, February twenty-first, one thousand eight hundred and forty-three, shall be duly executed, in all respects, as is provided by the terms of the above recited act, as modified by the provisions of this act, and the trustees are appointed, as is contemplated in said act, the Governor of this State shall execute and deliver, under the seal of State, a deed of trust to the said trustees, of all the property and

effects mentioned in the tenth section of said act; which said conveyance shall include the lands and lots remaining unsold, donated by the United States to the State of Illinois, to aid in the completion of the said canal; to be held in trust as in the said act stipulated. And it is expressly provided, that the subscribers to said loan may, and shall register their bonds or other evidences of indebtedness, upon which they may have made or may hereafter make their subscriptions, within one year after the appointment of trustees. And the said subscribers shall be entitled to priority in the payment of the respective advances to be made by them, and the interest thereon; also, a priority in the payment of the principal and interest of the bonds or other evidences of indebtedness to be registered by them, out of the proceeds of the said trust property; any thing in the said act above mentioned to the contrary notwithstanding.

SEC. 2. The majority of the said board of trustees, shall have power and authority to act and decide in all cases, and their acts shall bind all parties; and in appointing the said trustees, each subscriber to the said loan shall be entitled to one vote for each sum of three hundred and twenty dollars subscribed; and such election may be held in the city of New York, under the direction of the district judge of the United States for that district, or such person as he for that purpose may appoint.

SEC. 3. In case a sufficient sum shall not be subscribed or paid to complete said canal, the said subscribers shall share, *pari passu*, with other persons, who may subscribe and pay the residue of the amount necessary to complete the canal: *Provided*, That the subscribers to said loan shall have the right to subscribe and fill up the amount necessary to finish said canal, in the first instance; and if they neglect so to do, then any other person may subscribe such amount: *And, provided further*, That such subscribers may register bonds upon such subscriptions, as hereinbefore provided, within one year after such subscriptions.

SEC. 4. When the amount due for arrears and difference of interest on the registered bonds and other canal indebtedness shall be extinguished, then the principal of said registered bonds and canal indebtedness shall be paid, and when the said principal shall have been paid, the said trustees shall proceed to pay the interest on the unregistered canal bonds and canal indebtedness.

SEC. 5. The preliminary expenses of the negotiation of said contract, with the expenses of the examinations of the canal property by the agents appointed by the authority of the bond-holders, shall be first paid by the said trustees, unless some other provision for their payment be made by the General Assembly. But no further expense shall be incurred by the State, by sending agents to Europe or elsewhere, in relation to the matter.

SEC. 6. If the said canal shall not be completed within three years, as is contemplated in the fourth section of the above recited act, the subscribers to said loan who shall have advanced money in pursuance of their subscription, shall not forfeit the priority of payment secured to them by this act, but shall share in the trust property, *pari passu*, with such other persons as will advance further sums if such should be necessary to complete the canal.

APPROVED: March 1, 1845.

ACT, NUMBER XLI.

AN ACT TO AMEND AN ACT, ENTITLED "AN ACT TO PROTECT THE CANAL LANDS AGAINST TRESPASSES;" APPROVED, MARCH 4, 1837; AND AN ACT TO AMEND AN ACT, ENTITLED "AN ACT TO PROTECT THE CANAL LANDS AGAINST TRESPASSES;" APPROVED, FEBRUARY 26, 1839.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That for the purpose of more effectually protecting the canal lands against trespasses, the acting commissioner of the Illinois and Michigan canal, shall, immediately upon the passage of this act, appoint such agent or agents as may be necessary, to protect the canal lands and property; who shall possess all the powers and perform all the duties specified in the acts to which this is an amendment, except as hereinafter otherwise provided.

SEC. 2. Each of said agents shall receive, as a compensation for his services, the sum of two dollars per day, for every day he may be actually employed in performing the duties of such agent, to be paid out of the proceeds of the sales of down or fallen timber and wood, and judgments recovered under the provisions of this act, and the act to which this is an amendment: *Provided,* The aggregate amount paid to such agents, shall not exceed the amount heretofore paid to the single agent employed for that purpose.

SEC. 3. Each of the said agents, before entering upon the duties of his office, shall execute a bond to the State of Illinois, in the penalty of five hundred dollars, with one or more securities, to be approved by the acting commissioner of the Illinois and Michigan canal, conditioned that he will, well and faithfully execute all the duties required of him by law, and make full and true account and payment to the said acting commissioner, or such person or persons as may have charge of the affairs of said canal, of all moneys received by him as such agent; which said bond shall be filed and kept in the canal office.

SEC. 4. If any person shall cut, fell, box, bore, injure or destroy any tree or sapling of any description, standing or growing upon canal land, he or she so offending, shall pay five times the value of every tree or sapling, so cut, felled, boxed, bored, injured or destroyed, to be recovered by action of debt in the name of the State of Illinois, before any circuit court or justice of the peace having jurisdiction of the amount claimed; and shall also be liable to be indicted and punished according to the provisions of an act, entitled "An act to prevent trespassing on the canal lands of this State," approved, February 9, 1835.

SEC. 5. If any person shall wilfully and knowingly receive or use any tree, timber or wood, of any description, except trees down or fallen timber or wood, as authorized to be sold under the provisions of the law of this State for the protection of canal lands, he or she shall be liable to pay for every tree, timber or wood so purchased, received or used, five times the value thereof, to be recovered by ac-

tion of debt in the name of the State of Illinois, before any circuit court or justice of the peace having jurisdiction of the amount claimed.

SEC. 6. If any person shall, without permission from the acting commissioner or agent of the said canal lands, take or remove from the canal lands, any rock, stone or coal, he or she so offending, shall pay five times the value of such rock, stone or coal, so taken or removed as aforesaid, to be recovered as provided in the foregoing sections; and shall, moreover, be liable to be indicted and punished in accordance with the provisions of the act, entitled "An act to prevent trespasses on the canal lands of this State," approved, February 9, 1835.

SEC. 7. If any person or persons shall wilfully remove, injure or destroy any materials furnished for the construction of the canal, or any machinery surrendered to the State by contractors; or shall in any manner injure the canal or the embankments, walls or structures thereof, he, she or they, shall be liable to pay five times the amount of the damage occasioned thereby, and shall moreover be subject to indictment; and on conviction, shall be fined in any sum not more than two hundred dollars, or imprisoned, not exceeding ninety days, or both, at the discretion of the court.

SEC. 8. It shall be the duty of the judges holding courts in the counties of Cook, Will, Grundy and La Salle, to give the provisions of this act in especial charge to the grand juries of said counties respectively; and all justices of the peace and constables of said counties, are hereby required to cause this act to be enforced as far as the same lies in their power.

SEC. 9. The actions commenced in the circuit court under the provisions of this act, and the act to which this is an amendment, shall not be dismissed on account of any error, defect or omission in the pleadings or process, but the act entitled "An act concerning amendments and jeofails," approved, January 11th, 1827, shall be deemed applicable to such actions, and no suits commenced as aforesaid shall be dismissed because prosecuted by persons other than States' attorneys or the attorney general.

SEC. 10. That for the purpose of carrying this act into effect, the acting commissioner of the said canal shall have all the powers conferred upon the board of commissioners, by the acts of which this is amendatory, and he shall require the said agents to make report of their proceedings to him at such times as he shall appoint therefor, under oath, stating the amount of money he has received for the use of the State under the provisions of this act, for what and of whom he has received the same, the amount of judgments that have been received, and from whom, and the number of days he has been actually engaged in such business.

SEC. 11. That so much of the act entitled, "An act to protect the canal lands against trespasses," approved, March fourth, one thousand eight hundred and thirty seven, and the act entitled, "An act to amend an act to protect the canal lands against trespasses," approved, February twenty-sixth, one thousand eight hundred and thirty-nine, as comes in contact with the provisions of this act, be, and the same is hereby repealed; but all suits commenced under the provisions of the above recited acts, and now pending, shall be prosecuted to judgment in accordance with the provisions of said acts; and trespassers on canal lands prior to the passage of this act, against whom no suits have been commenced, may be prosecuted as heretofore provided by law.

SEC. 12. The acting commissioner is hereby authorized and directed to sell and dispose of all refuse stone, timber and all other materials and machinery be-

longing to the State, which is not to be used, or which are, in his opinion, unsuitable to be used in the construction of the canal; which sale shall be made for the highest prices which he can obtain therefor, either at public or private sale, and to be sold for gold and silver, or canal indebtedness.

SEC. 13. It shall be the duty of the canal commissioner, or other authorized agent of the State having charge of the canal and canal property, on the first Wednesday of April next, and annually thereafter, to offer for sale at public auction, at the canal office in Lockport, all lands and town lots except the town lots in the city of Chicago, which shall be sold in said city as soon as may be after the sale of lands and other town lots at Lockport, which have been heretofore sold and forfeited, and which may be hereafter forfeited to the State by the non-payment of instalments, or interest. Said commissioner or agent, shall give at least thirty days' notice of such sale, by publishing a description of the lands and lots to be offered for sale, in a newspaper, printed in Ottawa, and at least one of the papers printed in Chicago. Said lands and lots shall be sold in conformity with the general provisions of "An act to amend the several laws in relation to the Illinois and Michigan canal," approved, February twenty-third, eighteen hundred and thirty-nine: *Provided*, Said lands and lots shall not be sold for less than their value as heretofore appraised: *And, provided further*, That it shall be lawful for any person to redeem such lands or lots by making payment of the instalment or interest due, at any time previous to the day of sale.

SEC. 14. This act to take effect from and after its passage.

APPROVED, February 27, 1845.

ACT, NUMBER XLII.

AN ACT TO PROVIDE FOR THE DONATION OF LOTS, IN TOWNS SITUATED ON CANAL LANDS TO PUBLIC PURPOSES.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That any religious society to whom a lot has been donated or granted under the "Act to provide for the dedication of lots, in towns situated on canal lands, to public purposes," for the purpose of erecting a house of worship thereon, shall have the right to erect a parsonage and school-house upon such lot, and to use such parts thereof as may not be immediately occupied by the house of worship, for such parsonage, school-house and garden, and yard connected therewith.

SEC. 2. That any such religious society, which finds it more convenient to occupy for worship some other lot or building until the said society is able to erect a suitable house of worship upon such lot so donated or granted as aforesaid, shall have the right to lease the said lot to any person or persons, to be occupied as the lessee or lessees shall desire, until such time as such society may be able to build

thereon: *Provided*, That the rents received therefrom shall be expended in improving said lot, or for the purposes of said society.

SEC. 3. Nothing in this act, or the one to which this is an amendment, shall be so construed as to cause such society to forfeit such lot, or said lot to revert to the State, by reason of the occupancy or leasing of said lot as is provided for in the first and second sections of this act.

APPROVED: February 28, 1845.

ACT, NUMBER XLIII.

AN ACT CONCERNING CERTAIN COUNTIES THEREIN NAMED.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the acts of the county commissioners' courts of the several counties of this State, in loaning out at interest that portion of the internal improvement fund, which fell due said counties under the act of February twenty-seventh, one thousand eight hundred and thirty-seven, establishing a general system of internal improvements, be, and the same is hereby legalized.

SEC. 2. That said county commissioners' courts are also empowered to collect the money so loaned, as is provided for by law for the collection of other indebtedness.

SEC. 3. *And be it further enacted*, That it shall be the duty of said county commissioners' courts, and they are hereby required, to cause to be renewed, all bonds given as evidence of indebtedness to said fund, with good and sufficient security.

SEC. 4. That upon the debtor's compliance with the third section of this act, no higher interest shall be collected from said debtor from and after the renewal of any such bond, than six per cent. per annum: *Provided*, That this provision shall not extend to any portion of said funds which have, by law, been constituted a portion of the common school fund of any county in this State.

SEC. 5. *And be it further enacted*, That the county commissioners of the several counties of this State, may apply all such money, when collected, to any and all purposes they may think proper. This act to be in force from and after its passage.

APPROVED, February 28, 1845.

ACT, NUMBER XLIV.

AN ACT AUTHORIZING THE SURVEY OF CERTAIN LANDS THEREIN NAMED.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in any case, when two or more persons shall own or be in possession of separate parcels of land, situate in the same claim and survey, or legal subdivision of land, they may have the same surveyed by the county surveyor of the county in which the land is situated: the said surveyor, when required thereto, shall survey the lot of each proprietor in said claim and survey, or other legal subdivision of land, and make a plat thereof, designating the respective shares of each proprietor, by figures appropriately fixed therein, and specifying the number of acres in each lot, and certifying that the same was surveyed by him in conformity to law.

SEC. 2. The proprietors of said lots of land may have the said survey and certificate recorded in the recorder's office of their respective counties; for which service of recording, the said officers shall receive for each lot, ten cents in full compensation.

SEC. 3. It shall be the duty of the assessor in each county, to enter for taxation in his books, all lands liable to taxation in each claim and survey so platted and recorded, by the numbers of the respective lots, designating the claim and survey, and the number of acres in each lot, and their value, in separate columns, the taxes on which shall be paid and received by their respective numbers.

APPROVED, December 31, 1844.

ACT, NUMBER XLV.

AN ACT TO PROTECT OWNERS OF WOOD-YARDS AGAINST THE ILLEGAL ACTS OF STEAM-BOAT MASTERS AND OFFICERS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* If any master, captain, or other officers of a steam boat, shall stop at any wood yard in this State, and shall take cord wood therefrom, without the consent of the owner thereof; or having the consent of the owner, shall refuse to pay the price agreed on; or depart without paying for the same; or shall pay for less than the quantity taken, and depart, such captain, master or other officer so offend-

ing, and the owner of such boat, shall be liable to pay to such owner of such wood taken without consent, or not paid for, three times the value of said wood, to be recovered before any court having jurisdiction thereof; or before any justice of the peace of the county, where said suit may be brought, when the amount claimed does not exceed one hundred dollars. This act to take effect and be in force from and after its passage.

APPROVED: February 28, 1845.

ACT, NUMBER XLVI.

AN ACT CONCERNING THE PUBLIC TREASURY.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That hereafter, no sum or sums of money shall be contracted to be paid out of the treasury of the State, by any officer of the State; nor shall any person be encouraged to do any work or labor for the State, by any officer thereof, except such payment, or such work and labor, shall have been authorized by a previous law.

SEC. 2. That the first section of this act, shall not be so construed as to prevent the Governor from exercising the same control over the contingent fund, as has been heretofore exercised over said fund.

APPROVED: February 21, 1845.

ACT, NUMBER XLVII.

AN ACT GRANTING TO THE GENERAL GOVERNMENT THE RIGHT TO ESTABLISH AN ARMORY AT FORT MASSAC.

WHEREAS, The President of the United States, acting under the authority of law, has selected Fort Massac, in the county of Massac, in the State of Illinois, as a suitable site for the erection of a national armory: *And whereas,* it may be advisable, for the removal of all doubts as to the right of the General Government to acquire real estate, and establish public buildings, within the limits of independent States, without the consent of such States: Therefore,

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the consent of the State of Illinois be, and is hereby given

to the Government of the United States, for the erection of an armory at Fort Massac, in the said county of Massac; and that the said Government of the United States be, and hereby is authorized to acquire and hold forever, so much land within the State of Illinois at said Fort Massac, as shall be requisite and necessary for the uses and purposes of an Armory.

APPROVED: December 11, 1844.

[LAWS PASSED AT SESSIONS OF THE GENERAL ASSEMBLY,
PREVIOUS TO THAT OF 1844-5.]

ACT, NUMBER XLVIII.

AN ACT TO PROVIDE FOR THE COMPLETION OF THE ILLINOIS AND MICHIGAN CANAL,
AND FOR THE PAYMENT OF THE CANAL DEBT.

WHEREAS, It has been represented that certain holders of the bonds of this State are willing to advance the necessary funds for the completion of the Illinois and Michigan canal, upon being secured the payment of their said advances, and of their said bonds, by a vested lien upon the said canal, lands and revenues: For the purpose, therefore, of accomplishing an object so desirable and beneficial to the said bondholders and the State:

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That for the purpose of raising a fund for the completion of the Illinois and Michigan canal, the Governor of this State be and hereby is fully authorized and empowered to negotiate a loan, solely on the credit and pledge of the said canal, its tolls, revenues and lands, to be granted to trustees, as hereinafter provided, of one million six hundred thousand dollars, for a term, not exceeding six years, and at a rate of interest, not exceeding six per cent. per annum, payable out of the first moneys to be realized from the said canal, its lands, tolls and revenues; the payment of interest and reimbursement of principal, to be at such place, within or without the United States, and payable in such currency as may be agreed on.

SEC. 2. The holders of canal bonds and other evidences of indebtedness of this State, issued for the purpose of aiding in the construction of the Illinois and Michigan canal, or hereafter to be issued for work done, per centage, scaleage or damages, shall be first entitled to subscribe in proportion to the amount of bonds or other indebtedness held by them, and take the whole of the said loan; but if within a reasonable time, to be determined by the Governor, any of the said holders of canal bonds or indebtedness shall neglect or refuse to subscribe as aforesaid, the whole of the said loan may be subscribed for and taken by other holders of canal bonds or indebtedness; but if within a reasonable time, to be determined upon by the Gover-

nor, the holders of the said canal bonds or other evidences of indebtedness aforesaid, shall not subscribe for and take the whole of the said loan, then and in that case, any other person or persons, body politic or corporate, shall be entitled to subscribe for and take so much of the said loan as may remain unsubscribed for by the said holders of bonds or other evidences of debt aforesaid.

SEC. 3. After the said loan shall be subscribed for as aforesaid, there shall be appointed three discreet persons, to constitute a board, to be known by the style and description of the "Board of Trustees of the Illinois and Michigan Canal." One of the said trustees shall be appointed by the Governor of this State, and the other two shall be elected or appointed by the subscribers to the said loan, or the holders of the certificates authorized by this act, in manner and form as hereinafter mentioned. Whenever any vacancy shall occur in the said board of trustees, either by death or resignation, or from any other cause, said vacancy shall be filled by the Governor or holders of said certificates, to whom belonged the appointment of the trustees whose seat shall have become vacant, as the case may be.

SEC. 4. The first election of trustees, by the subscribers to said loan, under this act, shall be held at the canal office, at Lockport, at such time as the Governor of this State shall appoint, under the direction of one of the judges of the supreme court of this State, who is hereby appointed inspector of the first election; and the two persons then elected as trustees by the said subscribers, and the person appointed trustee by the Governor, shall hold their offices for two years, from the time of their said election or appointment, and until others are elected.

SEC. 5. Subsequent elections shall be held every two years, at such time and place, and under the direction of such persons as a majority of the trustees for the time being, shall, by resolution, to be entered on their minutes, appoint; and they shall hold their offices for two years, and until others are elected in their stead.

SEC. 6. At the election of trustees under this act, each stockholder shall be entitled to one vote for each and every one thousand dollars of stock held by him, and in all elections, votes may be given in person or by proxy.

SEC. 7. All elections shall be by ballot, and the two who shall have the greatest number of votes shall be the two trustees, duly elected by the said subscribers or holders of said certificates. At all such elections, the said subscribers or holders of said certificates, shall designate upon their ballots one of the persons voted for as president; and the person having the greatest number of votes as trustee and president, shall be one of the said trustees and president of said board.

SEC. 8. The said board of trustees of the Illinois and Michigan canal, when duly appointed and elected as aforesaid, shall apportion their respective duties among themselves, and so far as is not incompatible with this act, shall possess all the powers and perform all the duties conferred upon the board of commissioners of the Illinois and Michigan canal, by the act entitled "An act for the construction of the Illinois and Michigan canal," approved, January ninth, eighteen hundred and thirty-six, and the acts supplementary and amendatory thereto, and shall take an oath or affirmation, and give bonds with security, for the faithful discharge of the duties imposed upon them by this act.

SEC. 9. If the holders of any of the said canal bonds or other evidences of indebtedness, issued for the purpose of aiding in the construction of the Illinois and Michigan canal, shall become subscribers for the said loan, or any part thereof, they shall, at the time of subscribing, file, or cause to be filed with the Governor, a brief

description of said bonds or other evidences of indebtedness aforesaid, owned by them, which description shall be deposited by the Governor in the office of the auditor of public accounts, in order that the evidences may be preserved to discriminate the holders who subscribed for the said loan, and to identify the said bonds or other evidences of indebtedness aforesaid, that may in consequence be entitled to a priority of payment out of the property and assets granted to the board of trustees as hereinafter provided.

SEC. 10. For the purpose of placing in the hands of trustees, full and ample security for the payment of said loan, authorized by this act, and the interest thereon, as well as for securing a preference in the payment of such of the canal bonds and other evidences of indebtedness issued by this State for the purpose of aiding in the construction of the Illinois and Michigan canal, as may be owned by the subscribers to the said loan, the State does hereby irrevocably grant to the said board of trustees of the Illinois and Michigan canal, the bed of the said Illinois and Michigan canal, and the land over which the same passes, including its banks, margins, towpaths, feeders, basins, right of way, locks, dams, water power, structures, stone excavated, and stone and materials quarried, purchased, procured or collected for its construction; and all the property, right, title and interest of the State, of, in and to the said canal, with all the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and also, all the remaining lands and lots belonging to the said canal fund, or which hereafter may be given, granted or donated by the General Government to the State, to aid in the construction of the said canal, and the buildings and erections belonging to the State, thereon situated; the said board of trustees to have, hold, possess and enjoy the same, as fully and as absolutely, in all respects, as the State now can or hereafter could do, for the uses, purposes and trusts hereinafter mentioned; but it is to be understood that all canal lands and lots heretofore sold by the board of commissioners, upon which moneys are now due, or may hereafter become due, whether the said lands and lots be now forfeited or relinquished, or hereafter become forfeited or relinquished, shall be exempt from the aforesaid provisions of this act; and the trustee herein provided to be appointed by the Governor, or any other officer or officers, having the management of the affairs of the canal, until said trustee be appointed on the part of the State, is hereby authorized and required to settle all accounts due to contractors and others, (except for such damages as are hereinafter provided for,) by issuing certificates of indebtedness, which together with the certificates of indebtedness, scrip and acceptances, heretofore issued by the said canal commissioners, shall be received by said trustees or other officer or officers aforesaid, in payment for said lots and lands, whenever they may be presented for that purpose. The said lands and lots, hereby reserved, shall, within three months after the passage of this act, be appropriated, as is provided in the thirteenth section of this act, and sold in accordance with the laws of this State regulating the sale of canal lands.

SEC. 11. The subscribers to the said loan shall execute an agreement to and with the Governor of this State, to pay the amount respectively subscribed, to the said board of trustees, at such times and in such proportions as said trustees shall direct; and said agreement shall specify the manner in which said trustees shall give notice to the said subscriber, of every call for a payment: *Provided*, That in case any subscriber under the provisions of this act, shall fail, neglect or refuse to pay any instalment, at the time called for by said trustees, he shall forfeit all payments previously made, and all benefits and advantages arising under the provisions

of this act: *Provided, however,* That the said trustees shall be bound to make a call for at least one hundred thousand dollars per quarter for the first year after their appointment.

SEC. 12. Whenever, and as often as the said subscribers to the said loan shall make a payment of any portion of their subscriptions, in pursuance of a call of the said trustees, the said board of trustees by their president and secretary, under the seal of said board, shall execute a certificate to each of the said subscribers, for the amount paid by them on their respective subscriptions with one year's interest at the rate of six per cent. added to the principal, stipulating for the payment of the same within six years, with interest at the rate of six per cent. per annum, to be computed after one year from the date of said certificate, and to be paid semi-annually thereafter; the said principal and interest to be paid by the said trustees out of the first moneys to be realized by them from the Illinois and Michigan canal, its assets, revenues, toll and lands, granted to the said trustees by this act, which said certificate shall also be countersigned by the Governor, and the impress of the great seal of the State shall be affixed thereon by the secretary of State.

SEC. 13. The said board of trustees, when appointed, are hereby authorized to take possession of the said canal, lands, property and assets, granted to them by this act, and proceed to complete the same. They are hereby authorized to make such changes and alterations of the original plan of said canal as they may deem advisable, without reducing its present capacity or materially changing its present location, having due regard to economy, permanency of the work, and an adequate supply of water at all seasons. None of the lots, lands or water powers so granted to the said trustees, shall be sold until three months after the completion of the said canal: The said lots, lands and water powers shall then be offered for sale by the said trustees at public auction, in lots and legal sub-divisions once or oftener in each year for the four succeeding years; said sales to be made for cash or on credit in the manner prescribed in the act of the ninth of January, eighteen hundred and thirty-six. The said lands, lots and water power, before they are offered for sale as aforesaid, shall be appraised by three disinterested persons, to be appointed by the judge of the circuit in which said lands, lots and water power are situated, who shall take an oath faithfully and impartially to discharge the duty of appraisers. Said lands, lots and water power, when so appraised, shall not be sold for less than the appraisement. After the expiration of the said four years, the said trustees shall expose the residue of said lands, which may remain on hand, to sale at such times and in such manner as they may deem proper. The said board of trustees are authorized to convey lands and water powers sold by them as aforesaid, after the purchase for the same be fully paid, but not before; and the said lands and lots shall be exempt from taxation of every description by and under the authority of any law of this State, until after the same shall have been sold and conveyed by the said trustees as aforesaid: *Provided, also,* That in the construction of the said canal, no change shall be made in its location, so as to divert the water power from canal lands: *Provided,* That in all cases where improvements were made upon the said canal lands or lots, previous to the first day of February, eighteen hundred and forty-three, the owner of such improvements shall be entitled to purchase the said lands or lots on which said improvements are situated, at an appraisement to be made as aforesaid, without reference to said improvements.

SEC. 14. The said trustees shall proceed to the completion of the said canal, in a good, substantial and workmanlike manner, so that the same shall, if practicable, be ready for use and navigation within two years and six months from the time this act goes into operation. The said trustees shall keep a just, full and accurate account of all the costs and expenditures of completing and superintending the said canal, and of the rents, issues, revenues and profits received by them from the said canal, and from the property granted to them by this act, and of the amounts received by them under the said loan, and shall annually make a report to the Governor, in manner and form specified in the forty-third section of the said act of January ninth, eighteen hundred and thirty-six: *Provided*, That in case the subscribers, under the provisions of this act, shall fail or neglect to complete the said canal, within three years after this act goes into operation, then and in such case, the lands and property hereby granted to said trustees, shall revert to the State.

SEC. 15. The said board of trustees shall annually establish a tariff of tolls to be paid for transportation upon said canal, (but the legislature hereby reserves the right to increase the tolls with a view to an increase of revenue, but shall not reduce the same without the consent of the trustees;) and are hereby fully authorized and empowered to collect the same; and from time to time, to make, ordain and establish such reasonable rules, by-laws and regulations in relation to the collection of tolls, the transportation upon the canal, the conduct of boats and rafts, and the general police of the said canal, as are usual, or may be found necessary, and to enforce the observance of the same; and that said canal, when completed, shall, in all future time be free for the transportation of the troops of the United States and their munitions of war, without the payment of any toll whatever.

SEC. 16. After the completion of the said canal as aforesaid, the said board of trustees shall make annual dividends of the moneys which shall come to their hands from the said canal, its assets, tolls, revenues and lands granted to the said trustees by this act, after payment of incidental expenses, among the holders of the bonds of this State, in the following order: *First*, the said board of trustees shall annually make a *pro rata* dividend on payment of said moneys, on the certificates given to the subscribers, to the loan authorized by this act, until said certificates and interest thereon are fully paid: *Second*, the said trustees shall then make annual dividends and payments of said money upon the interest due upon the bonds, and other evidences of indebtedness held by the subscribers to the said loan, a description whereof shall have been filed with the Governor, as provided in the ninth section of this act, until the interest thereon is fully paid: *Third*, the said trustees shall then make annual dividends and payments of said money upon the interest due to the non-subscribing holders of bonds, or other evidences of canal indebtedness: *Fourth*, after paying all interest due such non-subscribing bondholders, the said trustees shall make annual dividends, *pro rata*, upon the principal of the bonds and other evidences of canal indebtedness, held by the subscribers to said loan, as provided for by the ninth section of this act, until the same shall be liquidated; at which time the trust hereby created shall cease, and the canal shall revert to the State, with all the appurtenances thereunto belonging: *Provided*, That the certificates of canal indebtedness, not stipulating on their face for the payment of interest, shall, when registered by subscribers to said loan, as hereinbefore provided, bear an interest of six per centum per annum, from and after they shall be so registered: *Provided, further*, That no appraisal shall be made for any damages arising under

the provisions of any contract entered into in pursuance of an act for the construction of the Illinois and Michigan canal, unless the contractor or contractors interested therein, shall first signify his or their consent in writing, (which writing shall be deposited with the appraisers, to be filed in the auditor's office,) that such appraisal of damages shall be made without allowing any prospective damages, or any profits which said contractor or contractors might have made, had they finished their jobs; but such contractor or contractors shall be allowed the value of their machinery upon the canal at the time the work stopped, and back per centage and scaleage; which entire amount of damages so allowed, to all contractors, shall not exceed the sum of two hundred and thirty thousand dollars.

SEC. 17. The Governor is hereby authorized and empowered to appoint three discreet and skillful persons to go on to the jobs and lettings upon the canal, and appraise the actual damage which the respective contractors upon the said canal will sustain in being deprived of the same. Said appraisal shall be final and conclusive, unless appealed from. That if any person shall consider himself aggrieved by the decision of said appraisers, he may appeal from the same at any time within thirty days, to the circuit court of the county in which the job so appraised is situated. If the Governor shall be satisfied that the appraisal is fair and honest, he shall issue certificates of canal indebtedness, bearing interest at six per cent., to the persons in whose favor the appraisal shall be made, for the amount; the holders of which certificates shall be entitled to all the privileges conferred by this act upon the other holders of canal indebtedness; and the present contractors of the Illinois and Michigan canal shall have the right to take the contract for the jobs which they now hold, at the estimate of the engineer to be appointed by said trustees, under such regulations and provisions as the said trustees shall direct.

SEC. 18. This act shall go into effect, and the said canal property and assets shall vest in the said trustees, as hereinbefore granted, whenever, and as soon as the full amount of the said loan shall be subscribed for, and the trustees elected as hereinbefore provided; and when this act goes into effect, so much of the acts heretofore passed by the legislature of this State in relation to the Illinois and Michigan canal, and the canal lands and property, as conflicts with the provisions of this act are hereby repealed.

SEC. 19. Whenever the trust created by this act shall have been fully executed and performed by the said trustees, the said canal and the canal property that may then remain, shall revert to the State; and the State hereby reserves the right of paying off the bonds and certificates to be paid to the said trustees, and the incidental expenses paid by them, and the interest thereon; and the said trustees shall then resign the said canal, and the remaining canal property and assets to the State.

SEC. 20. This act shall be a public act, and shall be liberally construed in all courts of justice, and the State hereby solemnly pledges its faith to supply, by future legislation, all such defects as may be found necessary, to enable the said trustees to carry into full effect, the fair and obvious intent of this act.

SEC. 21. If, in consequence of any defect, omission, or objection to the foregoing act, the said bondholders or other persons shall neglect or refuse to subscribe for the said loan, in that case, the Governor is hereby authorized to negotiate, and enter into a contract with the said bondholders, or other persons, in pursuance of the general principles of this act: *Provided*, That he shall make no further pledge of the faith or credit of the State, for any advance of money, but shall be limited to pledging the canal and canal property therefor: *And, provided further*, That in any

negotiations to be made under the provisions of this act, for the purpose of carrying them into effect, nothing shall be done which shall in anywise interfere with the rights now secured to the holders of canal bonds. The Governor is hereby vested with all such power as may be necessary to carry this act into operation, or to make or cause to be made, such negotiation.

SEC. 22. The said trustees shall employ a chief engineer of known and established character for experience and integrity, who shall be subject to the direction of the trustees, but shall be required to execute a bond to the Governor in the sum of ten thousand dollars, to be approved by him, for the faithful performance of all the duties of an engineer, and shall be subject to be removed by the Governor for any good reasons which he shall make known to the next General Assembly. The said engineer shall, in addition, be required to take an oath, that he will faithfully and impartially perform all the duties of his office, without respect to persons, and that he is neither interested, nor will be interested in any job, work or contract, let or to be let on the canal, or connected therewith; which oath shall be entered and subscribed on the bond of said engineer.

APPROVED: February 21, 1843.

[AMENDED:—See Acts Nos. 39 and 40.]

ACT, NUMBER XLIX.

AN ACT IN RELATION TO BURYING GROUNDS, CHURCH YARDS, AND LANDS USED BY LITERARY INSTITUTIONS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be the duty of societies and corporations owning, using and appropriating lands, not exceeding ten acres, for burying grounds, church grounds, and grounds for the use of literary institutions, to cause to be certified to the county commissioners' court of the proper county, by some credible person under oath, a full description of the lands by metes and bounds, in whom the title is, and for what purpose and use the land is held; and if it shall appear to said court that such land is not subject to taxation according to the revenue laws of this State, then that part shall be certified by said court to the auditor of public accounts, and the land shall remain exempt from taxation so long as it continues to be used exclusively for the purposes aforesaid.

APPROVED: March 2, 1843.

ACT, NUMBER L.

AN ACT TO EXEMPT THE PROPERTY OF COLLEGES AND COMMON SCHOOLS FROM TAXATION FOR A LIMITED PERIOD.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all colleges and seminaries of learning incorporated, or which may hereafter be incorporated, by any act or acts of the General Assembly of this State, be and the same are hereby exempted from taxation, for State, county, or other incorporation purposes, upon all college and seminary buildings, libraries, philosophical and chemical, or other scientific apparatus, and the lands on which such institutions are located, not exceeding one hundred and sixty acres: *Provided,* That the property thus exempted shall be devoted exclusively to the purposes of education.

SEC. 2. All laws of this State for the collection of revenue, or for other purposes, so far as they conflict with the provisions of this act, are hereby repealed.

APPROVED: March 6, 1843.

ACT, NUMBER LI.

AN ACT TO AMEND "AN ACT IN RELATION TO RELIGIOUS SOCIETIES."

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That hereafter, it may be lawful for any religious society in this State, to purchase, or receive by a donation, and hold any real estate, not exceeding forty acres, for the purpose of camp-meeting ground, and the lots necessary for the same.

SEC. 2. The title to said real estate shall be held by trustees appointed by said society; and the same may become incorporated according to the provisions of "An act concerning religious societies," in force, March 1, 1835. This act to take effect from and after its passage.

APPROVED: March 2, 1839.

ACT, NUMBER LII.

AN ACT TO PROVIDE FOR THE RECEIPT OF THE DISTRIBUTIVE SHARE OF THIS STATE OF THE PROCEEDS OF THE SALE OF THE PUBLIC LANDS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the Governor of this State be and he is hereby authorized and empowered, by himself, or by his accredited agent, to receive from the treasury of the United States any and all sum or sums of money now due, or which may become due to this State, under the provisions of an act of the Congress of the United States of America, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved, September fourth, one thousand eight hundred and forty-one; and to execute any needful and proper voucher therefor.

APPROVED: February 21, 1843.

ACT, NUMBER LIII.

AN ACT RELATING TO THE ADMINISTERING OF OATHS IN CASES OF THE TRIAL OF IMPEACHMENTS, OR OTHER TRIALS BEFORE THE SENATE.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be lawful, in all cases of the trials of impeachments or other trials before the senate, for the speaker of the senate to administer oaths to the members, witnesses or any other persons who are required to be sworn; and it shall also be lawful for any member of the senate, secretary or clerk thereof, to administer oaths to all persons required to be sworn in such cases.

APPROVED: January 18, 1833.

ACT, NUMBER LIV.

AN ACT TO PROVIDE FOR THE COLLECTION OF DEMANDS GROWING OUT OF CONTRACTS FOR SALES OF THE POSSESSION OF THE PUBLIC LANDS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all contracts, promises, assumpsits or undertakings in writing, which shall hereafter be made in good faith and without fraud, collusion, or circumvention, for sale, purchase or payment to be made for the possession of claimed lands owned by the Government of the United States, shall be deemed valid in law and equity, and may be sued for and recovered as in other cases.

SEC. 2. That the act, entitled "An act to provide for the collection of demands growing out of contracts for sales of improvements on public lands," approved, February fifteenth, eighteen hundred and thirty-one, be hereafter construed to apply as well to contracts, promises, assumpsits or undertakings, made subsequent, as to those made previous to the purchase of said lands from the Government of the United States.

This bill having remained with the Council of Revision ten days, and the General Assembly being in session, it has become a law this second day of February, eighteen hundred and thirty-nine.

A. P. FIELD, *Secretary of State.*

CERTIFICATE.

By virtue of authority conferred by law, I do hereby certify, that the printed chapters contained in the foregoing pages, and composing THE REVISED STATUTES, have been printed under my personal inspection and superintendence—that I have compared the same with the enrolled chapters in my possession, and find the same as published, to be true and correct copies of said enrolled chapters, with the exception of such corrections of clerical errors and mistakes, as are authorized by law to be made: Also, that I have, in like manner, examined the several ACTS of the General Assembly of the State of Illinois, which are published in the foregoing APPENDIX to the Revised Statutes; and have compared the same with the same acts, as certified and published by the secretary of State, in pursuance of law; and find the same to be correct copies thereof, excepting necessary corrections of clerical errors, &c.

M. BRAYMAN.

SPRINGFIELD, ILL., *July* 21, 1845.

NATURALIZATION.

ABSTRACT OF THE LAWS OF THE UNITED STATES IN RELATION TO THE NATURALIZATION OF ALIENS.

SECTION 1. Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

SEC. 2. *First*: That he shall have declared, on oath or affirmation, before the supreme, superior, district or circuit court of some one of the States, or of the territorial districts of the United States, or a circuit or district court of the United States, or before the clerk of either of such courts (1) two (2) years at least, before his admission, that it was, *bona fide*, his intention to become a citizen of the United States, and to renounce forever, all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof such alien may at the time, be a citizen or subject. (3)

SEC. 3. From this condition are exempted, any alien being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, 1798, and the fourteenth day of April, 1802, and who has continued to reside within the same. (4)

SEC. 4. Any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the second section, three years previous to his admission: But, such alien shall make the declaration required therein, at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the *bona fide* intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization. (5)

SEC. 5. When any alien, who shall have complied with the condition specified in section second, and who shall have pursued the directions prescribed in the

(1) Act May 26th, 1824, sec. 3. Story 1973.

(2) *Ibid* sec. 4.

(3) Act April 14th, 1802. Story 850.

(4) Act March 26th, 1804, sec. 1. Story 942.

(5) Act May 26th, 1824, sec. 1. Story 1973.

second section of the act of April 14, 1802,* may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law. (6)

SEC. 6. An alien shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court. (7)

SEC. 7. The court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the State or territory where such court is at the time held, one year, at least; and it shall further appear to their satisfaction, that during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. The oath of the applicant shall, in no case, be allowed to prove his residence. (8)

SEC. 8. In case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided*, That no alien, who shall be a native citizen, denizen or subject of any country, state or sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States. (9)

SEC. 9. But persons resident within the United States or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had, before that day, made a declaration, according to law, of their intention to become citizens of the United States; or who, by the existing laws of the United States, were, on that day, entitled to become citizens, without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies, at the times, and in the manner prescribed by the laws heretofore passed on that subject: *Provided*, That nothing herein contained, shall be taken or construed to interfere with, or prevent the apprehension and removal, agreeably to law, of any alien enemy, at any time previous to the actual naturalization of such alien. (10)

SEC. 10. Any alien being a free white person, who was residing within the limits, and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen: *Provided*, That

* The second section of the act of April 14, 1802, required an alien when he arrived in the United States, to have his name registered, &c., with the clerk of the proper court, &c. This section was repealed by act of May 24, 1823. Story 850, 2145.

(6) Act March 26th, 1804, sec. 2. Story 942.

(7) Act 14th April, 1802, sec. 1. Story 850.

(8) Act 14th April, 1802, sec. 1. Story 850.

(9) Act 15th April, 1802, sec. 1. Story 850.

(10) Act of July 30, 1813. Story 1354.

whenever any person, without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted: and the residence of the applicant within the limits, and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses: and such continued residence within the limits, and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided, for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court, admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. (11)

SEC. 11. Nothing in the foregoing section ten contained, shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States, according to section three. Whenever any person, without a certificate of such declaration of intention as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. (12)

SEC. 12. The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of twenty-one years, at the time of their parents' being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States: and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States. The right of citizenship shall not descend to

(11) Act May 24, 1828. Story 2145; and see Story 1354.

(12) Act 22d March, 1816, sec. 2. Story 1539.

persons whose fathers have never resided within the United States : And no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the war of the revolution, shall be admitted a citizen, without the consent of the legislature of the State in which such person was proscribed. (13) Children of persons naturalized before the fourteenth of April, 1802, under age at the time of their parents' naturalization, were, if dwelling in the United States on the fourteenth of April, 1802, to be considered as citizens of the United States. (14)

SEC. 13. Any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years at least, within and under the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the State or territory where such court is at the time held ; and on his declaring on oath or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject ; and moreover, on its appearing to the satisfaction of the court, that during the said term of two years, he has behaved as a man of good moral character, is attached to the constitution of the United States, and well disposed to the good order and happiness of the same ; and where the alien applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his making, moreover, in the court, an express renunciation of his title or order of nobility, before he shall be entitled to such admission : all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof. (15)

SEC. 14. Every court of record, in any individual State, having common law jurisdiction, and a seal, and clerk or prothonotary, shall be considered as a district court, within the meaning of the naturalization act ; and every alien, who may have been naturalized in any such court, shall enjoy the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States. (16)

SEC. 15. No person who shall arrive in the United States, after February the seventeenth, 1815, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission, have resided within the United States, without being at any time during the said five years, out of the territory of the United States. (17)

(13) Act 14th April, 1802, sec. 4. Story 850.

(14) Story 850.

(15) Act April 14th, 1802, sec. 1. Story 850.

(16) Act April 14th, 1802, sec. 3.

(17) Act March 3d, 1813, sec 12. Story 1304.

FUGITIVES FROM LABOR AND JUSTICE.

AN ACT RESPECTING FUGITIVES FROM JUSTICE, AND PERSONS ESCAPING FROM THE SERVICE OF THEIR MASTERS.

SECTION 1. *Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever the executive authority of any State in the Union, or of either of the territories northwest or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such State or territory to which such person shall have fled, and shall, moreover, produce the copy of an indictment found, or an affidavit made, before a magistrate of any State or territory as aforesaid, charging the person so demanded with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the State or territory from whence the person so charged fled, it shall be the duty of the executive authority of the State or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear: But if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses, incurred in the apprehending, securing, and transmitting such fugitive to the State or territory making such demand, shall be paid by such State or territory.

SEC. 2. That any agent appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the State or territory from which he or she shall have fled. And if any person or persons shall, by force, set at liberty, or rescue the fugitive from such agent while transporting as aforesaid, the person or persons so offending shall, on conviction, be fined not exceeding five hundred dollars, and he imprisoned not exceeding one year.

SEC. 3. That when a person held to labor in any of the United States, or in either of the territories on the northwest or south of the river Ohio, under the laws thereof, shall escape into any other of the said States or territories, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the State, or before any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made, and upon proof, to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such State or territory, that the person so seized or arrested doth, under the laws of the State or territory from which he or she fled, owes service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor, to the State or territory from which he or she fled.

SEC. 4. That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared; or shall harbor or conceal such person, after notice that he or she was a fugitive from labor as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving, moreover, to the person claiming such labor or service, his right of action for, or on account of, the said injuries, or either of them.

APPROVED: February 12, 1793.

AUTHENTICATION OF STATUTES, RECORDS, &c.

AN ACT TO PRESCRIBE THE MODE IN WHICH THE PUBLIC ACTS, RECORDS AND JUDICIAL PROCEEDINGS IN EACH STATE, SHALL BE AUTHENTICATED SO AS TO TAKE EFFECT IN EVERY OTHER STATE.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the acts of the legislatures of the several States shall be authenticated by having the seal of their respective States affixed thereto: That the records and judicial proceedings of the courts of any State shall be proved or admitted, in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them, in every court within the United States, as they have, by law or usage, in the courts of the State from whence the said records are, or shall be taken.

APPROVED: May 26, 1790.

AN ACT SUPPLEMENTARY TO THE ACT, ENTITLED "AN ACT TO PRESCRIBE THE MODE IN WHICH THE PUBLIC ACTS, RECORDS AND JUDICIAL PROCEEDINGS, IN EACH STATE, SHALL BE AUTHENTICATED SO AS TO TAKE EFFECT IN EVERY OTHER STATE.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the passage of this act, all records and exemplifications of office books, which are, or may be kept in any public office of any State, not appertaining to a court, shall be proved or admitted in any other court or office in any other State, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal,

er with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept; or of the governor, the secretary of State, the chancellor or the keeper of the great seal of the State, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the governor, the secretary of State, the chancellor or keeper of the great seal, it shall be under the great seal of the State in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have by law or usage in the courts or offices of the State from whence the same are or shall be taken.

SEC. 2. That all the provisions of this act, and the act to which this is a supplement, shall apply, as well to the public acts, records, office books, judicial proceedings, courts and offices, of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, courts and offices, of the several States.

APPROVED, March 27, 1804.



COURTS.

The State of ILLINOIS is divided into *nine judicial circuits*, which are severally composed of the following counties ; and courts are held at the following places therein, at the following times :

FIRST CIRCUIT.

GREENE—At *Carrollton*, on the last Monday of March and the first Monday of September.

PIKE—At *Pittsfield*, on the second Mondays of April and September.

CALHOUN—At *Gilead*, on Thursdays before the fourth Mondays of April and September.

JERSEY—At *Jerseyville*, on the fourth Mondays of April and September.

MACOUPIN—At *Carlinville*, on the first Mondays of May and October.

SCOTT—At *Winchester*, on the second Mondays of May and October.

CASS—At *Beardstown*, on the third Mondays of May and October.

MASON—At *Bith*, on Fridays after the third Mondays of May and October.

MORCAN—At *Jacksonville*, on the fourth Mondays of May and October.

SECOND CIRCUIT.

SHELBY—At *Shelbyville*, on the first Mondays of March and August.

MONTGOMERY—At *Hillsborough*, on the second Mondays of March and August.

EFFINGHAM—At *Ewington*, on the Fridays after the second Mondays of March and August.

FAYETTE—At *Vandalia*, on the third Mondays of March and August.

BOND—At *Greenville*, on the fourth Mondays of March and August.

CLINTON—At *Carlyle*, on the first Mondays of April and September.

WASHINGTON—At *Nashville*, on the second Mondays of April and September.

PERRY—At *Pinckneyville*, on the third Mondays of April and September.

RANDOLPH—At *Kaskaskia*, on the fourth Mondays of April and September.

MONROE—At *Waterloo*, on the first Mondays of May and October.

ST. CLAIR—At *Belleville*, on the second Mondays of May and October.

MADISON—At *Edwardsville*, on the fourth Mondays of May and October.

THIRD CIRCUIT.

MARION—At *Salem*, on the second Mondays of March and August.

JEFFERSON—At *Mt. Vernon*, on the third Mondays of March and August.

HAMILTON—At *McLeansboro*, on the fourth Mondays of March and August.

FRANKLIN—At *Benton*, on the Mondays following.

WILLIAMSON—At *Marion*, on the Mondays following.

JACKSON—At *Murfreesborough*, on the Mondays following.

- UNION—At *Jonesborough*, on the Mondays following.
 ALEXANDER—At *Unity*, on the Mondays following.
 JOHNSON—At *Vienna*, on the Mondays following.
 MASSAC—At *Metropolis City*, on the Mondays following.
 POPE—At *Golconda*, on the Thursdays following.
 HARDIN—At *Elizabethtown*, on the Thursdays following.
 GALLATIN—At *Equality*, on the Mondays following.

FOURTH CIRCUIT.

- WAYNE—At *Fairfield*, on the last Thursdays of March and August.
 WHITE—At *Carmi*, on the first Mondays of April and September.
 EDWARDS—At *Albion*, on the second Mondays of April and September.
 WABASH—At *Mt. Carmel*, on the Thursdays thereafter.
 LAWRENCE—At *Lawrenceville*, on the Wednesdays thereafter.
 CRAWFORD—At *Palestine*, on the Wednesdays thereafter.
 CLARK—At *Marshall*, on the Mondays thereafter.
 COLES—At *Charleston*, on the Mondays thereafter.
 CUMBERLAND—At *Greenup*, on such days as may be appointed by the judge.
 JASPER—At *Newton*, on such days as may be fixed by the judge.
 RICHLAND—At *Olney*, on such days as may be fixed by the judge.
 CLAY—At *Louisville*, on such days as may be appointed by the judge.

FIFTH CIRCUIT.

- FULTON—At *Lewistown*, on the second Mondays of March and August.
 McDONOUGH—At *Macomb*, on the fourth Mondays of March and August.
 SCHUYLER—At *Rushville*, on the first Mondays of April and September.
 BROWN—At *Mt. Sterling*, on the second Mondays of April and September.
 ADAMS—At *Quincy*, on the third Mondays of April and September.
 HANCOCK—At *Carthage*, on the third Mondays of May and October.
 HENDERSON—At *Oquaka*, on the first Mondays of June any November.
 WARREN—At *Monmouth*, on the second Mondays of June and November.
 KNOX—At *Knoxville*, on the third Mondays of June and November.
 MARQUETTE—At *Columbus*, on such days as the judge may appoint.

SIXTH CIRCUIT.

- JO DAVIESS—At *Galena*, on the second Mondays of March and June, and the fourth Monday of October.
 STEPHENSON—At *Freeport*, on the first Monday of April and second Monday of August.
 WINNEBAGO—At *Rockford*, on the second Monday of April and third Monday of August.
 BOONE—At *Belvidere*, on the fourth Monday of April and the first Monday of September.
 LEE—At *Dixon*, on the first Monday of May and the second Monday of September.
 WHITESIDE—At *Sterling*, on the second Monday of May and third Monday of September.

HENRY—At *Geneseo*, on the third Monday of May and fourth Monday of September.

MERCER—At *Millersburg*, on the Thursdays thereafter.

ROCK ISLAND—At *Stephenson*, on the fourth Monday of May and the first Monday of October.

CARROLL—At *Savannah*, on the first Monday of June and second Monday of October.

SEVENTH CIRCUIT.

COOK—At *Chicago*, on the fourth Monday of March and first Monday of November.

LAKE—At *Lakeport*, on the third Mondays of April and first Mondays of September. [The judge of the Cook county court may hold any general or special term of the circuit court in and for the county of Lake, on the request of the presiding judge of the seventh judicial circuit—laws of 1844-5, p. 78.]

McHENRY—At ———, on the fourth Monday of April and second Monday of September.

DU PAGE—At *Naperville*, on the first Monday of May and fourth Monday of September.

GRUNDY—At *Morris*, on the second Monday of May and the first Monday after the fourth Monday of September.

WILL—At *Joliet*, on third Monday of May, and the second Monday after the fourth Monday of September.

IROQUOIS—At *Middlefort*, on the first Monday after the fourth Monday of May, and the Monday after the fourth Monday of September.

EIGHTH CIRCUIT.

SANGAMON—At *Springfield*, on the third Mondays of March, the fourth Mondays in July, and the second Mondays of November.

TAZEWELL—At *Tremont*, on the Wednesdays before the second Mondays of April, and September.

WOODFORD—At *Metamora*, on Thursdays succeeding the second Mondays of April and September.

McLEAN—At *Bloomington*, on the Mondays thereafter.

LIVINGSTON—At *Pontiac*, on the Mondays thereafter.

DE WITT—At *Clinton*, on the Thursdays thereafter.

PIATT—At *Monticello*, on the Mondays thereafter.

CHAMPAIGN—At *Urbana*, on the Wednesdays thereafter.

VERMILLION—At *Danville*, on the Mondays thereafter.

EDGAR—At *Paris*, on the Mondays thereafter.

MOULTRIE—At *Sullivan*, on the Mondays thereafter.

MACON—At *Decatur*, on the Thursdays thereafter.

CHRISTIAN—At *Taylorville*, on the Mondays thereafter.

LOGAN—At *Camden*, on the Thursdays thereafter.

MENARD—At *Petersburg*, on the Mondays thereafter.

NINTH CIRCUIT.

MARSHAL—At *Lacon*, on the third Monday of March, and the ninth Monday after the fourth Monday of August.

PUTNAM—At *Hennepin*, on the Monday after the third Monday of March, and the tenth Monday after the fourth Monday of August.

LA SALLE—At *Ottawa*, on the second Friday after the third Monday of March, and the tenth Friday after the fourth Monday of August.

KENDALL—At *Yorkville*, on the fourth Monday after the third Monday of March, and the fourth Monday of August.

KANE—At *Geneva*, on the fifth Monday after the third Monday of March, and the Monday after the fourth Monday of August.

DE KALB—At *Sycamore*, on the sixth Monday after the third Monday of March, and the third Monday after the fourth Monday of August.

OGLE—At *Oregon City*, on the seventh Monday after the third Monday of March, and the fourth Monday after the fourth Monday of August.

BUREAU—At *Princeton*, on the eighth Monday after the third Monday of March, and the fifth Monday after the fourth Monday of August.

STARK—At *Toulon*, on the ninth Monday after the third Monday of March, and the sixth Monday after the fourth Monday of August.

PEORIA—At *Peoria*, on the tenth Monday after the third Monday of March, and the seventh Monday after the fourth Monday of August.

REFERENCES.

For 1st	<i>Circuit</i> ,	See Laws,	1844-'5,	pp. 48, 49.
" 2d	"	"	1842-'3,	p. 130 and 1844-'5, p. 47.
" 3d	"	"	1842-'3,	p. 131.
" 4th	"	"	1842-'3,	p. 133, and 1844-'5, p. 48.
" 5th	"	"	1842-'3,	pp. 135, 136, and 1844-5, p. 108.
" 6th	"	"	1841,	p. 109.
" 7th	"	"	1844-'5,	p. 78.
" 8th	"	"	1844-'5,	pp. 48, 49.
" 9th	"	"	1842-'3,	p. 129.

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TO

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OF THE

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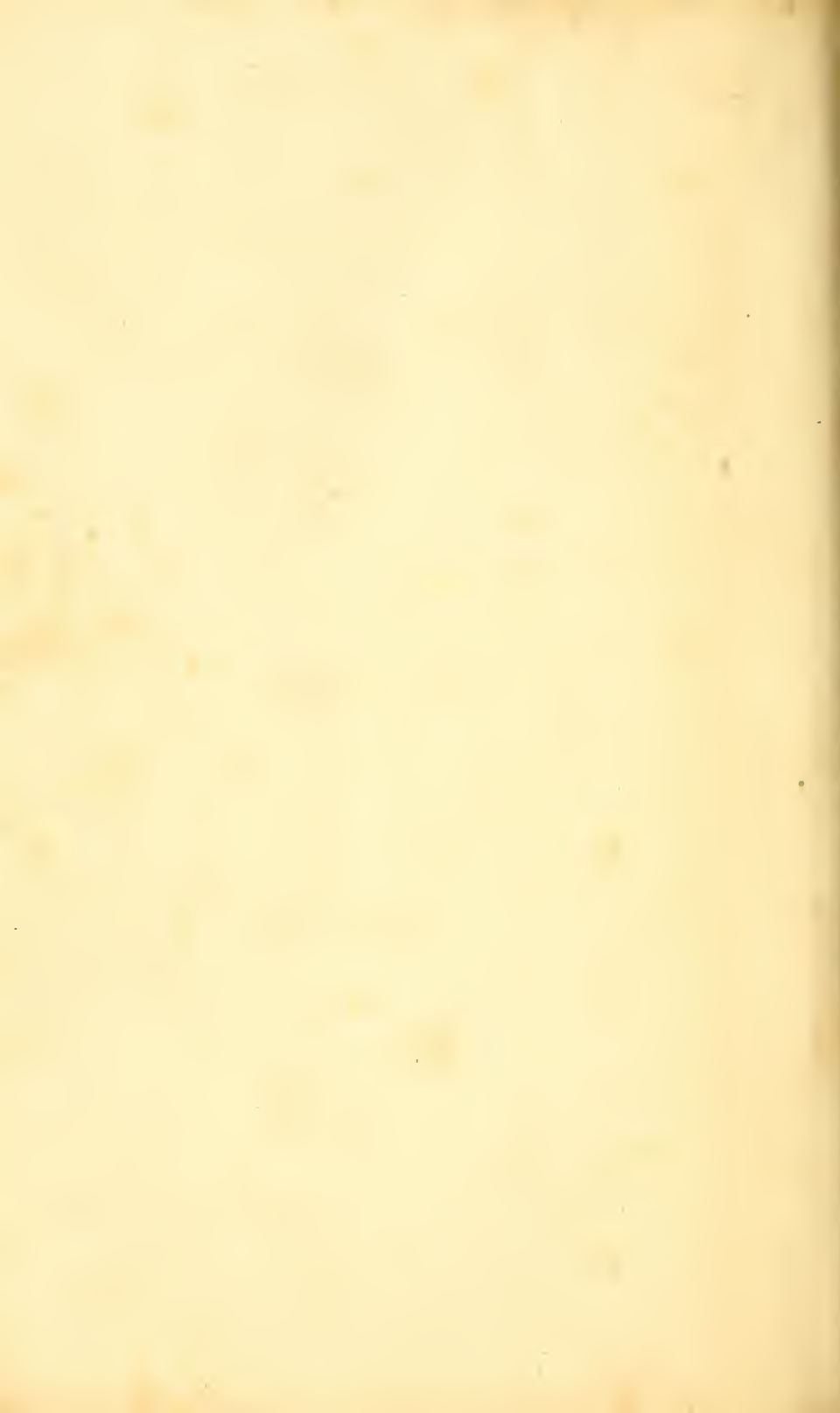
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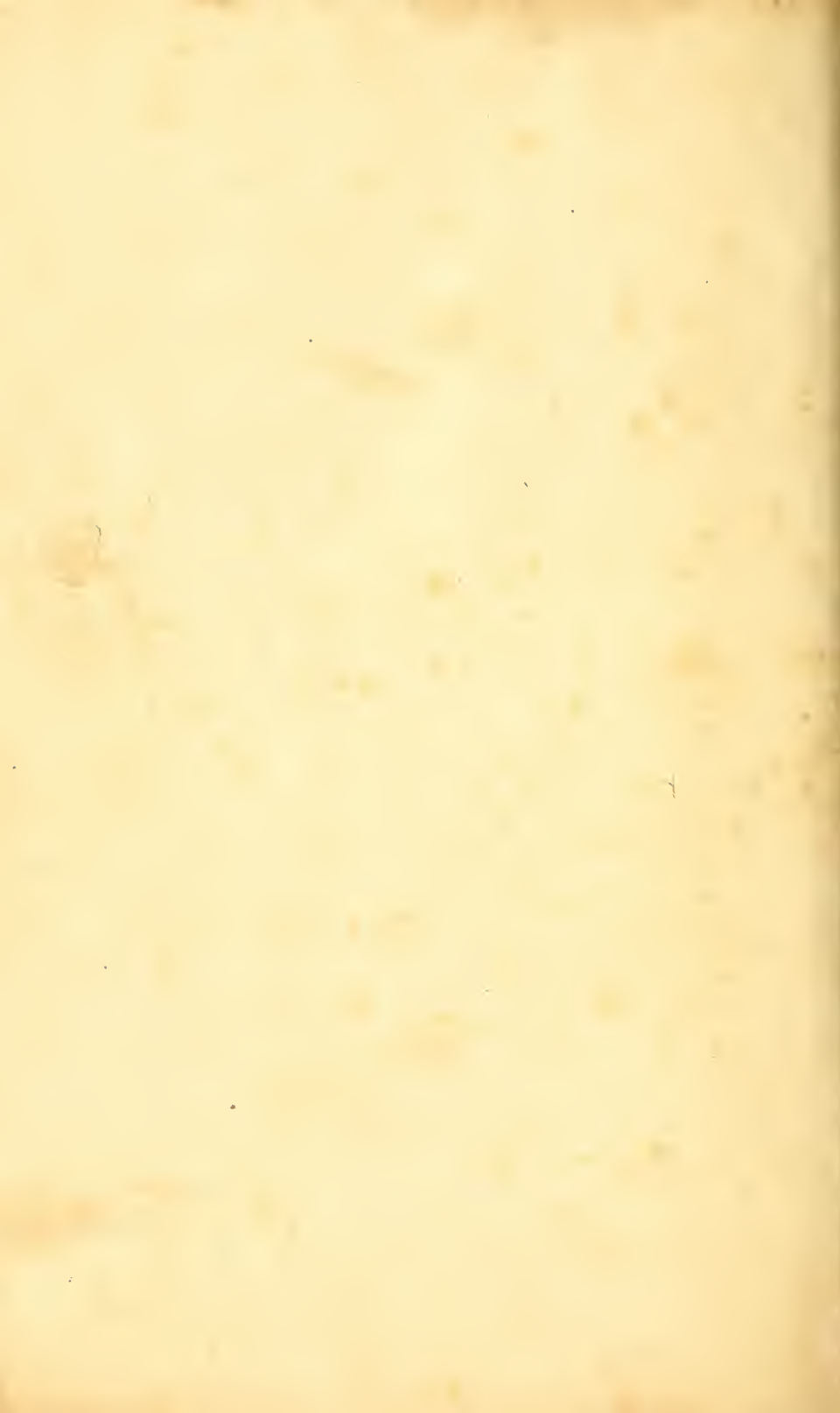
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